



# **Cleveland Board of Zoning Appeals**

**Monday February 27, 2023 at 9:30 AM**

**\*\*PLEASE MUTE YOUR MICROPHONE\*\***

Kelley Britt, Board Chair

Elizabeth Kukla, Secretary

# Cleveland Board of Zoning Appeals

February 27, 2022

## Preamble

IN COMPLIANCE WITH NOTIFICATION REQUIREMENTS OF THE CITY'S OPEN MEETING LAW, AND SECTION 101.021 OF THE CODIFIED ORDINANCES OF CLEVELAND, OHIO, 1976, NOTICE OF THIS MEETING HAS BEEN PUBLICLY POSTED.

ALL BOARDS AND COMMISSIONS UNDER THE PURVIEW OF THE CITY PLANNING DEPARTMENT CONDUCTS ITS MEETINGS ACCORDING TO ROBERT'S RULES OF ORDER. ACTIONS DURING THE MEETING WILL BE TAKEN BY VOICE VOTE. ABSTENTIONS FROM ANY VOTE DUE TO A CONFLICT OF INTEREST SHOULD BE STATED FOR THE RECORD PRIOR TO THE TAKING OF ANY VOTE.

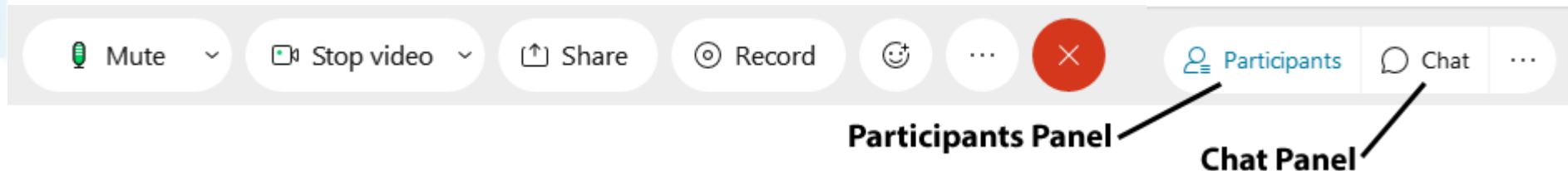
IN ORDER TO ENSURE THAT EVERYONE PARTICIPATING IN THE MEETING HAVE THE OPPORTUNITY TO BE HEARD, WE ASK THAT YOU USE THE RAISE HAND FEATURE BEFORE ASKING A QUESTION OR MAKING A COMMENT. THE RAISE HAND FEATURE CAN BE FOUND IN THE PARTICIPANTS PANEL ON THE DESKTOP AND MOBILE VERSION AND ACTIVATED BY CLICKING THE HAND ICON. PLEASE WAIT FOR THE CHAIR OR FACILITATOR TO RECOGNIZE YOU AND BE SURE TO SELECT UNMUTE AND ANNOUNCE YOURSELF BEFORE YOU SPEAK.

WHEN FINISHED SPEAKING, PLEASE LOWER YOUR HAND BY CLICKING ON THE RAISE HAND ICON AGAIN AND MUTE YOUR MICROPHONE.

WE WILL ALSO BE UTILIZING THE CHAT FEATURE TO COMMUNICATE WITH PARTICIPANTS. THE CHAT FEATURE CAN BE ACTIVATED BY CLICKING THE CHAT BUTTON LOCATED ON THE BOTTOM OF THE WEBEX SCREEN.



CALL-IN USERS CAN UNMUTE BY USING \*6



# Cleveland Board of Zoning Appeals

February 27, 2022

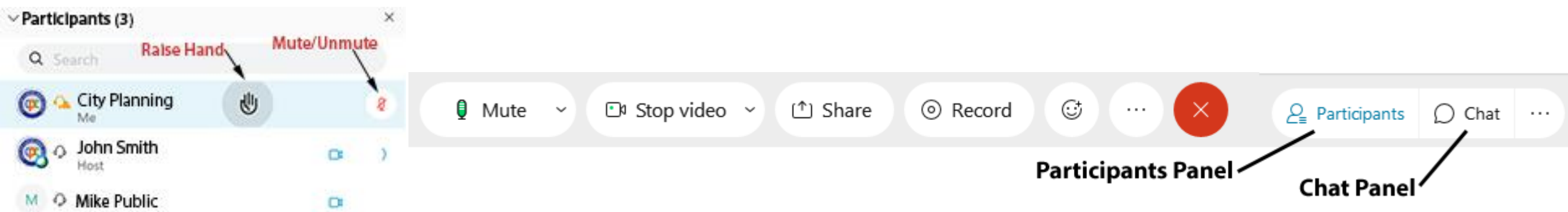
## Preamble

ALL MEETING ACTIVITY IS BEING RECORDED VIA THE WEBEX PLATFORM.  
THESE PROCEEDINGS ARE ALSO BEING LIVE STREAMED VIA YOUTUBE FOR PUBLIC VIEW.

WE HAVE PROVIDED A LINK TO THE MEETING FOR THOSE WHO WISH TO SPEAK ON A PARTICULAR CASE VIA OUR WEBSITE AND EMAIL.

**ALL REQUESTS TO SPEAK ON A PARTICULAR MATTER HAVE BEEN CONSIDERED.**

WE HAVE ALSO RECEIVED EMAILS FROM THOSE WHO HAVE PROVIDED WRITTEN COMMENT ON A PARTICULAR MATTER.



# Cleveland Board of Zoning Appeals

## Call to Order & Roll Call

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# Cleveland Board of Zoning Appeals

## Postponements/Withdrawals

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# POSTPONEMENT

**Calendar No. 22-220:**

**6100 Truscon Avenue**

**Ward 5**

Madprop LLC, proposes to install 513 linear feet of ten foot high electrified security fence. The owner appeals for relief from the strict application of the following section of the Cleveland Codified Ordinances:

1. Section 358.05(a)(1) which states in General and Unrestricted Industry Districts, fences in actual front yards and actual side street yards shall not exceed six (6) feet in height and may be either open or solid. A ten foot high electrified fence is proposed in actual front yard. *POSTPONED FROM JANUARY 3, 2023 TO ALLOW TIME FOR THE APPELLANT TO MEET WITH THE COUNCILMAN AND A REPRESENTATIVE OF SLAVIC VILLAGE DEVELOPMENT CORPORATION.*

# Cleveland Board of Zoning Appeals

## Public Hearing

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# Public Hearing

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**Calendar No. 23-011:**

**WO-7010-1402048**



Crittenden Court Joint Venture LLC., dba Crittenden Court Garage, appeals under the authority of Section 76-6(b) of the Charter of the City of Cleveland and Section 329.02(d) of the Cleveland Codified Ordinances from the decision of the Commissioner of Assessments and Licenses to not waive the regressive re-assessment of parking tax for area residents (Filed January 26, 2023).

# Public Hearing

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Calendar No. 23-011:

WO-7010-1402048



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is appealing an administrative decision of the Commissioner of Assessments and Licenses. The standard of review to be applied is whether the administrative decision was illegal, arbitrary, capricious, unreasonable or unsupported by the preponderance of substantial, reliable, and probative evidence. If the Appellant fails to meet this burden, the administrative decision must be affirmed.

**OFFICIAL NOTICE**  
City of Cleveland  
Board of Zoning Appeals  
601 Lakeside Avenue  
Cleveland, OH 44114  
Secretary Elizabeth Kukla  
Telephone (216) 664-2580

February 8, 2023

Crittendon Court Joint Venture  
1382 W. 9<sup>th</sup> Street #210  
Cleveland, OH 44113

You are hereby notified that the matter stated below is scheduled to be heard before the Board of Zoning Appeals on Board of Zoning Appeals on **February 27, 2023 at 9:30 AM**. The hearing will be held on the **WebEx platform** and will be livestreamed on YouTube.

**9:30 AM**

**Calendar No.: 23-011:**      **Crittenden Court Joint Venture LLC., Appealing decision of the Commissioner of Assessments and Licenses**      **Ward 3 Kerry McCormack**

Crittenden Court Joint Venture LLC., dba Crittenden Court Garage, appeals under the authority of Section 76-6(b) of the Charter of the City of Cleveland and Section 329.02(d) of the Cleveland Codified Ordinances from the decision of the Commissioner of Assessments and Licenses to not waive the regressive re-assessment of parking tax for area residents (Filed January 26, 2023).

**YOU WILL RECEIVE AN INVITATION VIA E-MAIL WITH INSTRUCTIONS ON HOW TO JOIN THE WEBEX VIRTUAL MEETING.**

CC: Bernard Butler, Assessments and Licenses  
Dedrick C. Stephens, Commissioner of Assessments and Licenses  
Councilman Kerry McCormack, Ward 3  
File

*Schedule for Feb. 27*

*\*Adm Appeal\**

**APPLICATION FOR APPEAL**

**BOARD OF ZONING APPEALS**

**CITY OF CLEVELAND**

APPROVED FOR FILING  
BY \_\_\_\_\_

**B2A 23-00011**



**This form must be filled out by the Appellant prior to a hearing before the Board of Zoning Appeals.**

DATE \_\_\_\_\_

Appellant's Name (Owner of Record) \_\_\_\_\_

*Crittenden Court Joint Venture LLC*

Appellant's Mailing Address \_\_\_\_\_

*1382 W. 9TH STREET #210, CLEVELAND, OH 44113*

Appellant's Telephone Number \_\_\_\_\_

*216 789-0076*

Prospective Purchaser of Property (If Any) \_\_\_\_\_

Prospective Purchaser's Address \_\_\_\_\_

Prospective Purchaser's Telephone \_\_\_\_\_

Tenant's Name (If Any) \_\_\_\_\_

Tenant's Mailing Address \_\_\_\_\_

Tenant's Telephone \_\_\_\_\_

Attorney's or Agent's Name \_\_\_\_\_

*Tom Parras or Audrey Mecklenburg*

Attorney's or Agent's Address \_\_\_\_\_

*Same*

Attorney's or Agent's Telephone \_\_\_\_\_

Location of Property in Question: \_\_\_\_\_

**This is an appeal for a permit to erect, alter, convert, maintain, and/or use premises for:**  
(please include a simple statement of proposed work below)

OR:

This is an appeal from a Violation Notice, an Administrative Order, Waste Collection Ticket or other: (Please specify type below)

*Parking Occupancy Tax Compliance Issue*

SIGNED BY APPELLANT OR REPRESENTATIVE  
(Please print name below signature)

*Audrey Mecklenburg*  
**AUDREY MECKLENBURG**  
**DIRECTOR**





Crittenden Court Joint Venture, LLC  
1382 W. 9<sup>th</sup> Street, #210  
Cleveland, Ohio 44113  
216-789-0076  
1400w9th@gmail.com

RECEIVED BY  
Division of Assessments and Licenses

DEC 22 2022

December 21, 2022

Board of Appeals  
City of Cleveland  
Division of Assessments and Licenses  
Tax Administration  
601 Lakeside Avenue, Room #122  
Cleveland, Ohio 44114-1085

RE: Crittenden Court Joint Venture LLC, dba Crittenden Court Garage  
vs City of Cleveland Division of Assessments and Licenses

Dear Sirs:

A letter was received after office hours on December 5, 2022 regarding the Commissioner's decision to not waive the regressive re-assessment of parking tax for area residents. We wish to appeal the decision of the Commissioner of Assessment and Licenses. Some of the reasons are that:

1. The department of assessment and licenses has a new interpretation of a vague clause in the ordinance only to their benefit. Over the past 27 years since the ordinance was passed, up until this year, the department of assessment and licenses has led us to believe that we were in compliance with all facets of the ordinance. The precedent has long been set, and if the department wants to change procedure, it should be going forward, not re-evaluated for past years.
2. The Commissioner agrees that we have acted in good faith and that we have attempted to abide by the ordinance. This should be treated as a paperwork issue and not a money issue.
3. We use all the department of assessment and licenses prescribed forms, and the department has failed to provide form or any sort of content of what they are looking for regarding a "contract" for off-site parking. We have long-standing understandings with area buildings provide parking to area residents. Some written emails giving permission to Crittenden regarding parking were delivered to the commissioner, however, no comments regarding such were received back.
4. There has been no clear reason that a 3<sup>rd</sup> party contract is required to provide parking in a downtown environment. We do have contracts with all of our parkers and they do sign the Parking Tax exemption form provided by the department of assessment and licenses.

Please provide information on what is required to move forward.

Sincerely,

*Audrey Mecklenburg*  
Audrey Mecklenburg  
Crittenden Court Joint Venture LLC

1/11/23 - spoke to Audrey on the phone - she will send documents later today. EAK



City of Cleveland  
Justin M. Bibb, Mayor  
Department of Finance  
Division of Assessments & Licenses  
601 Lakeside Avenue, Room 122  
Cleveland, Ohio 44114-1085  
216/664-2260  
www.ClevelandOH.gov

BZA23-00011



\*\*\*\*\*APPEAL HEARING DECISION\*\*\*\*\*

**CRITTENDEN COURT JOINT VENTURE LLC  
D/b/a CRITTENDEN COURT GARAGE**

Vs.

**CITY OF CLEVELAND  
DIVISION OF ASSESSMENTS AND LICENSES  
TAX ADMINISTRATION**

Appearances:

Tom Paris on behalf of Crittenden Court Joint Venture, LLC  
Audrey Mecklenburg on behalf of Crittenden Court Joint Venture, LLC  
David Bowen on behalf of Crittenden Court Joint Venture, LLC

Bernard Butler, CPA on behalf of City of Cleveland  
Alan Krupa, CPA on behalf of City of Cleveland

**PURPOSE:**

The purpose of this ruling is to render a decision on Crittenden Court Joint Venture LLC's, d/b/a Crittenden Court Garage ("Crittenden") appeal of the proposed audit adjustments related to parking occupancy tax returns filed for the period of June 2019 through May 2022.

**SCOPE:**

This ruling is issued specifically and solely to Crittenden and is based on the specific set of facts contained in the ruling.

**BACKGROUND:**

On May 11, 2022, The City of Cleveland, Department of Finance, Division of Assessments and Licenses ("DAL") initiated an audit of Crittenden's parking occupancy tax returns for the period of June 2019 through May 2022.

On July 19, 2022, DAL issued an audit report to Crittenden. The report reflected \$731,664.50 in proposed audit adjustments resulting in total tax, interest, and penalties of \$87,192.02. The proposed adjustments relate solely to residential parking exemptions Crittenden allowed for patrons that reside downtown, but not at the Crittenden.

On August 24, 2022, DAL received correspondence from Crittenden protesting the proposed audit adjustments. A hearing was scheduled for September 27, 2022, to provide Crittenden the opportunity to present evidence and testimony to support their position.

**CRITTENDEN'S POSITION:**

The following is a summary of the information Crittenden provided during the hearing:

The current owners are 2<sup>nd</sup> generation owners. They have prepared returns and paid parking occupancy taxes for several years. They have paid millions of dollars in parking occupancy taxes and paid ten times that amount in CAT, payroll, and income taxes. They strive to be good neighbors and pay their fair share.

They have paid \$1.3 million over the years in parking occupancy taxes. The residential exemptions were only in force since 2012 and were a good reinforcing document. Crittenden was active in the city and the downtown development. They sold a building by Public Square and worked with the City to build the Crittenden apartments and garage, a net benefit for both them and the City.

the resident utilizes such home, dwelling unit, apartment, boarding house, condominium, or mobile home for living or sleeping for at least thirty (30) consecutive days; or

- C. The patron is a licensed valet, provided that the parking space being occupied is made available pursuant to a written contract with the facility operator and is being occupied in the ordinary course of providing parking services to a patron of the valet.

**ANALYSIS:**

Based on the facts and circumstances of this case the exemptions defined in CO §196.03 (d) (1) A & C are not relevant, and therefore will not be discussed in this decision. Which leaves us with the exemption as defined in CO §196.03 (d) (1) B.

The ordinance as currently written contains the language "off-site parking facility under contract to provide parking for residents at that place of residence". The Merriam-Webster dictionary defines the term "under contract" as required to provide something (such as work or service). A literal interpretation of the ordinance would be a patron parking at his place of residence or at an off-site parking facility that is under contract with his place of residence to provide parking is exempt from the tax.

There is nothing in the ordinance as written that suggests patrons are automatically exempt from the parking occupancy tax by way of being a downtown resident. The language in the ordinance is specific as to what qualifies for the residential exemption. The patron must be parking at his place of residence or at an off-site parking facility contracted to provide parking for the residents of a particular place.

**COMMISSIONER'S DECISION:**

I have thoroughly reviewed all of the information and conducted an objective review of the ordinance. It is my decision that Crittenden's patrons that do not reside at Crittenden and for which Crittenden is not under contract with the patron's place of residence to provide parking, do not qualify for the residential exemption. I therefore affirm the proposed audit adjustments as reflected in the audit report, which results in additional tax of \$58,533.16.

All of the evidence and information in this case indicates Crittenden operated in good faith and attempted to abide by the ordinance. It does not appear the Crittenden received a financial benefit from classifying the patrons in question as residential. Crittenden performed in a fiduciary role collecting and remitting the parking occupancy tax. Crittenden did not charge or collect the parking tax from the patrons in question.

Based on the above and the authority granted me as defined in CO §196.13, I am abating the Failure to Pay penalty for \$10,405.94. Furthermore, the Failure to File penalty of \$13,584.85 does not appear to be applicable, as the returns were filed timely.

They recently became aware that they do not have to pay the parking occupancy tax for valet parking, which they have paid through the years. Crittenden provides an invaluable amenity for the City by providing reasonable 24 hour licensed parking for residents of downtown Cleveland.

They have complied with the "spirit and letter of the law". They are not the only parking lot owners with this issue, but are the first to be noticed. They have been operating this way for twenty-seven years and believed they were doing the right thing.

They ask for 30-day stay; require identification and a completed City residential exemption form before allowing the residential parking exemption. They monitor customers, and if any appear to be parking only during business hours, they change their status to non-residential.

They believe the contracts should be between parking facilities and each individual resident, not parking facilities and the place of residence. They have contracts with all of their residential customers. If the audit and subsequent proceedings result in changes being made, they will change as needed. They believe if surrounding property managers were made liable for parking, they would lose parking customers.

The surrounding property managers recommend Crittenden to their residents as a place to park. Approximately 80% to 90% of their customers come from Bingham, Bridgeview, and Perry/Payne apartment complexes. They also have customers from the Standard apartment complex. The building manager at the Standard apartment complex approves parking at Crittenden, but will not put it in writing.

They are big promoters for the City, city residency and try to honor the "spirit of the law". Garage expenses are higher than lot expenses. They are not averse to paying what is due, but do not want to pay the retroactive amount of \$50,000. They will do whatever it takes moving forward to comply with the city ordinance.

They have reached out to council member Terry McCormack to clarify the ordinance, as it is confusing.

#### LAW:

Chapter 196 of the Codified Ordinances of Cleveland, Ohio ("CO") pertains to Parking Occupancy Tax. CO §196.03 (d) (1) defines the three allowable exemptions related to Parking Occupancy Tax:

The tax shall not apply to transactions with respect to which:

- A. The operator is the United States government or a division or department thereof; or
- B. The patron is a resident of a single-family home, multiple-family dwelling unit, apartment, boarding house, condominium, or mobile home occupying parking space for the purpose of parking onsite at that place of residence or at an off-site parking facility under contract to provide parking for residents at that place of residence, provided that

The results of my decision are as follows:

	<u>Per Audit</u>	<u>Per Appeal</u>	<u>Adjustment</u>
Tax	\$58,533.16	\$ 58,533.16	\$ 0.00
Interest	4,668.08	4,668.08	0.00
Failure to File	13,584.85	0.00	13, 584.85
Failure to Pay	10,405.94	0.00	10,405.94
Total	\$ 87,192.03	\$ 63,201.24	\$ 23,990.79

If you disagreed with this decision, you may file an appeal with the Board of Appeals. Your appeal must be submitted within 20 days of issuance of this decision.



Dedrick Stephens, CFE  
Commissioner of Assessments and Licenses



**Re: Crittenden Court vs City of Cleveland**

Kukla, Elizabeth &lt;Ekukla@clevelandohio.gov&gt;

Tue 1/24/2023 5:58 PM

To: Crittenden Garage &lt;1400w9th@gmail.com&gt;; Audrey Mecklenburg &lt;awmdevcom@gmail.com&gt;

2 attachments (420 KB)

application.pdf; creditcardform.pdf;

Hello Ms. Mecklenburg, circling back on this conversation; I do not seem to have an application or fee from you. Could you please fill out the attached application and credit card form. The fee is \$50. Please send it back to me as soon as possible so that I may process your application.,



Elizabeth Kukla  
Secretary of the Board of Zoning Appeals  
Phone 216-864-2581  
Web [clevelandohio.gov](http://clevelandohio.gov)  
[Cleveland City Planning Commission](#)



Crittenden Court Joint Venture, LLC  
1382 W. 9<sup>th</sup> Street, #210  
Cleveland, Ohio 44113  
216-789-0076  
1400w9th@gmail.com



BZA-23-00011

December 21, 2022

Board of Appeals  
City of Cleveland  
Division of Assessments and Licenses  
Tax Administration  
601 Lakeside Avenue, Room #122  
Cleveland, Ohio 44114-1085

RE: Crittenden Court Joint Venture LLC, dba Crittenden Court Garage  
vs City of Cleveland Division of Assessments and Licenses

Dear Sirs:

A letter was received after office hours on December 5, 2022 regarding the Commissioner's decision to not waive the regressive re-assessment of parking tax for area residents. We wish to appeal the decision of the Commissioner of Assessment and Licenses. Some of the reasons are that:

1. The department of assessment and licenses has a new interpretation of a vague clause in the ordinance only to their benefit. Over the past 27 years since the ordinance was passed, up until this year, the department of assessment and licenses has led us to believe that we were in compliance with all facets of the ordinance. The precedent has long been set, and if the department wants to change procedure, it should be going forward, not re-evaluated for past years.
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4. There has been no clear reason that a 3<sup>rd</sup> party contract is required to provide parking in a downtown environment. We do have contracts with all of our parkers and they do sign the Parking Tax exemption form provided by the department of assessment and licenses.

Please provide information on what is required to move forward.

Sincerely,

Audrey Mecklenburg  
Crittenden Court Joint Venture LLC

**From:** Kukla, Elizabeth <Ekukla@clevelandohio.gov>**Sent:** Thursday, January 12, 2023 4:45 PM

**To:** Crittenden Garage <1400w9th@gmail.com>; Audrey Mecklenburg <awmdevcom@gmail.com>; Tom Parras <tparras@gmail.com>; David Bowen <dbowen@rlba.com>

**Subject:** Re: Crittenden Court vs City of Cleveland

Is there another page with the date the letter was issued or is there an envelope? The date of the letter is going to be of interest to the board.



Elizabeth Kukla  
Secretary of the Board of Zoning Appeals  
Phone 216-864-2581  
Web [clevelandohio.gov](http://clevelandohio.gov)  
[Cleveland City Planning Commission](#)

**From:** Crittenden Garage <1400w9th@gmail.com>**Sent:** Wednesday, January 11, 2023 7:06 PM



(2) At any hearing held as provided under this section, the determination and assessment by the Commissioner shall be prima facie correct and the burden shall be on the petitioner to prove otherwise.

(3) The Commissioner may prescribe rules and regulations governing the form and procedure for protests and hearings.

(4) The decision of the Commissioner shall become final upon the expiration of twenty (20) days from the date notice is provided to the petitioner, unless prior thereto the petitioner files an appeal to the board in accordance with division (b).

(b) *Review by Board.*

(1) Any decision of the Commissioner rendered under subsection (a) of this section may be appealed by timely filing an appeal to the board of appeals established pursuant to Charter Section 76-6 in the same manner as other appeals to the board. The board shall have authority to amend, vacate, or affirm any such decision appealed from, in conformity with the intent and purpose of this chapter.

(2) Decisions of the board shall become final after thirty (30) days following the date of publication, unless prior thereto the Commissioner or any proper party, appeal the board's decision pursuant to RC Chapter 2506.

(Ord. No. 878-09. Passed 7-1-09, eff. 7-8-09)

**§ 196.18 Statute of Limitations**

(a) *Assessment of Tax.*

(1) Except as otherwise provided in this section, an assessment shall be issued within three (3) years from the date the return was due or the date the return was filed, whichever is later.

(2) Where an operator underreports more than twenty-five percent (25%) of the total tax due, an assessment shall be issued within six (6) years from the date the return was due or the date the return was filed, whichever is later.

(3) No limitation in the time for assessment of taxes and associated interest and penalties shall apply in the case of a false or fraudulent return.

(4) An amended return filed pursuant to Section 196.07(c) shall not extend the time provided by any provision of this section.

(b) *Offenses.*

(1) Except as so provided in paragraph (2) of this section, prosecutions for an offense made punishable under this chapter shall be commenced within three (3) years after commission of the offense.

(2) Prosecutions for an offense made punishable under this chapter relating to the willful failure to pay any tax due or file a required return or attempt to evade the application of the tax shall be commenced within six (6) years after the commission of the offense.

(c) *Collection.* Any action or suit for collection of taxes assessed shall be commenced within ten (10) years from the date of assessment.

(d) *Persons Other than the Taxpayer.* The time allowed for any action against a person liable for the payment of any tax, interest, or penalty other than the taxpayer shall be the same as in the case such action was being taken against the taxpayer.

(Ord. No. 878-09. Passed 7-1-09, eff. 7-8-09)

**§ 196.19 Confidential Information**

A. The operator is the United States government or a division or department thereof: or

B. The patron is a resident of a single-family home, multiple-family dwelling unit, apartment, boarding house, condominium, or mobile home occupying parking space for the purpose of parking onsite at that place of residence or at an off-site parking facility under contract to provide parking for residents at that place of residence, provided that the resident utilizes such home, dwelling unit, apartment, boarding house, condominium, or mobile home for living or sleeping purposes for at least thirty (30) consecutive days; or

C. The patron is a licensed valet, provided that the parking space being occupied is made available pursuant to a written contract with the facility operator and is being occupied in the ordinary course of providing parking services to a patron of the valet.

(2) No exemption from tax shall be granted without a valid exemption certificate completed by the party claiming to be exempt. The exemption certificate shall be prescribed by the Commissioner and include all information deemed necessary for the identification of the parties to the transaction and the authority from which an exemption is claimed. A transaction shall be presumed to be taxable in the absence of a complete exemption certificate executed at the time of the transaction. The operator shall remit the original exemption certificates with the remittance return in which the exempt transaction is reported and retain copies of all exemption certificates on file for a period of time consistent with this chapter.

(e) *Collection of Tax.* An operator is required to collect the tax at the time of the transaction and to pay the amount collected or amount that should have been collected over to the Commissioner as provided herein. The tax shall be paid and the operator held liable, whether or not such tax has been in fact collected from the patron.

(Ord. No. 405-10. Passed 4-19-10, eff. 4-22-10)

**§ 196.04 Application of Payment**

(a) *Order of Application.* Payments shall be applied first to interest due, then penalties due, and finally taxes due.

(b) *Reporting Period.* Payments shall be applied to the reporting period specified on the remittance return accompanying payment. If a payment is not accompanied by a remittance return or the payment exceeds the balance due for the relevant reporting period, then payment, or remainder thereof, shall be applied to the earliest reporting period in which a balance is due and outstanding.

(Ord. No. 878-09. Passed 7-1-09, eff. 7-8-09)

**§ 196.05 Time Allowed for Receipt**

(a) *Due Date.* Any filing required by this chapter must be received by the date specified.

(b) *Time of Receipt.* The date of receipt shall be the earlier of the date physically received by the Commissioner; or the postmark date on the filing, provided such filing is physically received by the Commissioner by the tenth day following the postmark date on the filing.

(c) *Delay.* No extension shall be granted for an untimely filing, regardless if such delay was caused by an error of the carrier, misrouted mail, or improperly addressed mail.

(d) *Automatic Extension.*

(1) Where timely receipt is a condition of compliance with any provision of this chapter and the last day for such receipt falls on a Saturday or Sunday, the last day for compliance shall be extended to the following Monday.

(2) Where timely receipt is a condition of compliance with any provision of this chapter and the last day for such receipt falls on a federal holiday or a day that City Hall is not open for business, the last day for compliance shall be extended to the following day.



# Public Hearing

**Calendar No. 23-016:**

**1546 E 65<sup>th</sup> Street**

**Ward 7**



Famicos Foundation, proposes to erect a 1 ½ story frame single-family residence with attached garage on a City of Cleveland land bank lot. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 357.08(b)(1) which states that the required rear yard is 14 feet and 10 inches and the appellant is proposing 13.3 feet.
2. Section 337.23(6)(B)(2)(b) which states the required side street setback for attached garage is 18 feet and the appellant is proposing 12'.
3. Section 341.02(b) which states that City Planning approval is required before issuance of building permit.



# Public Hearing

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Calendar No. 23-016:

1546 E 65<sup>th</sup> Street

Ward 7



**SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:**

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**





## HISTORY OF THE PROPERTY





## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the rear yard and side street setback requirements of the zoning code.

To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.

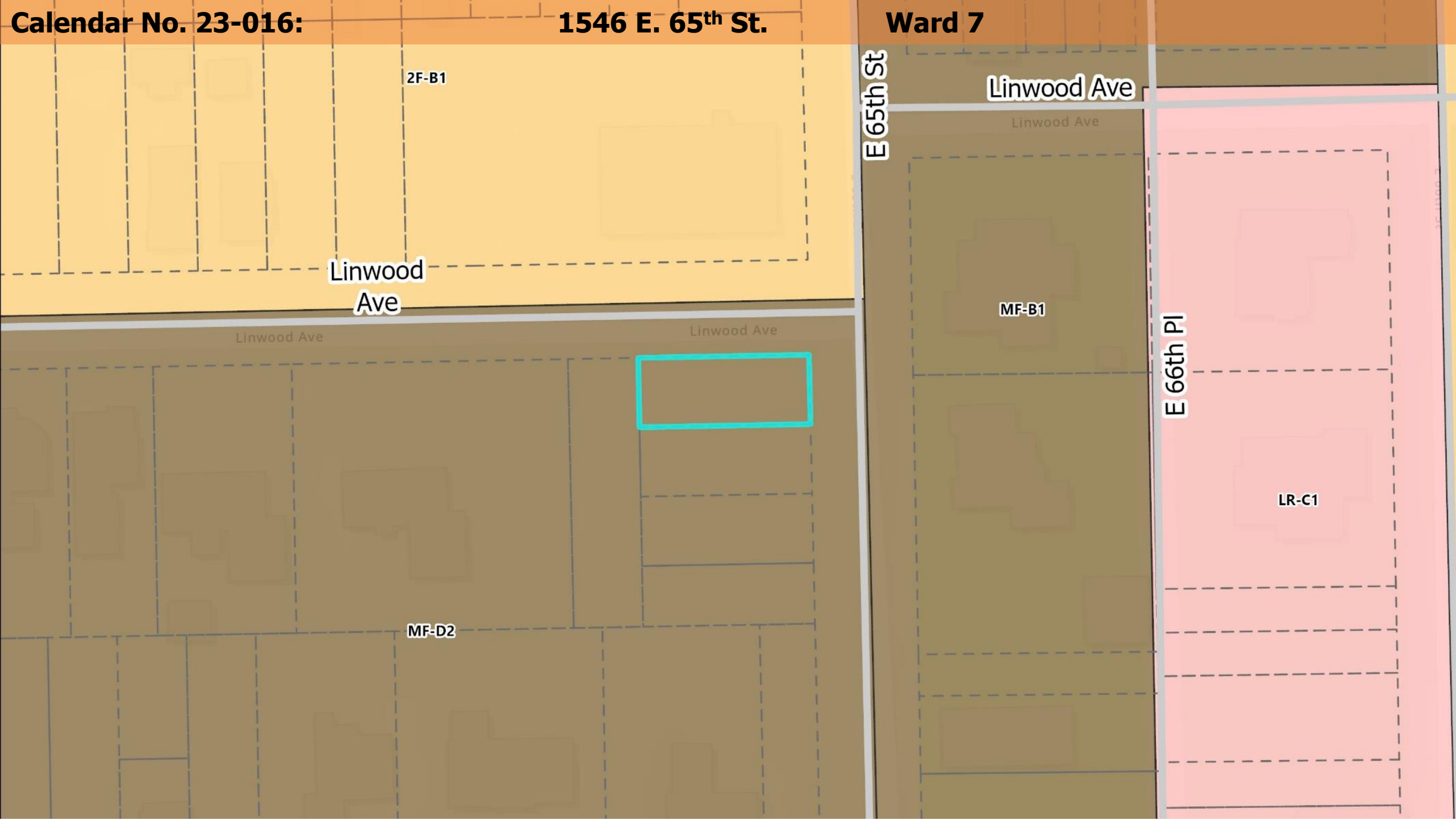


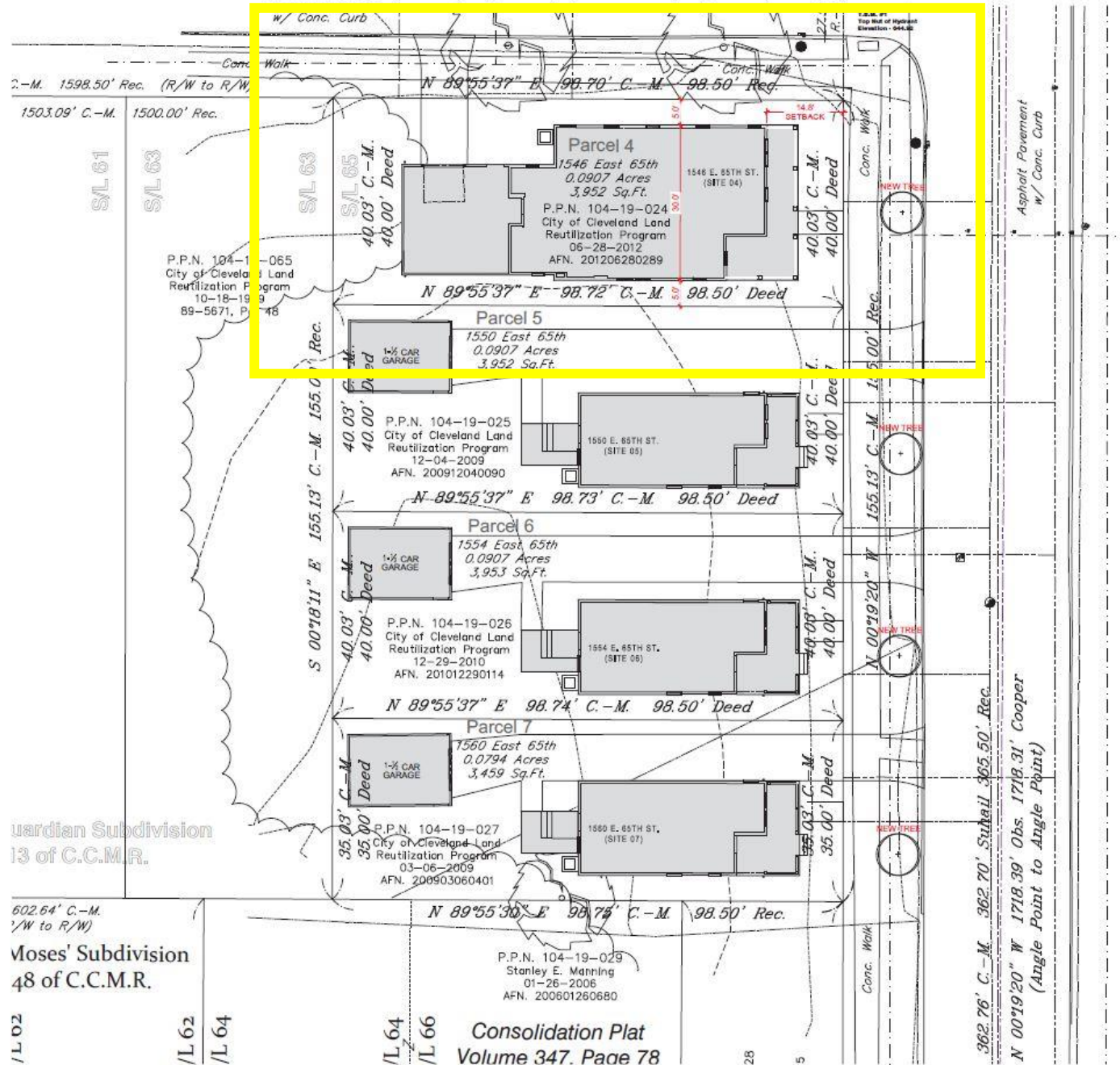












AST 65TH STREET 60'  
(FORMERLY NORWOOD STREET)  
(A PUBLIC RIGHT-OF-WAY)

**SITE PLAN**  
1" = 10'-0"  
ZONING: 2F-B1  
15% OF LOT DEPTH SETBACK = 98.7' X 0.15 = 14.8'

**UTILITY I**  
O.U.P.S. Reference No.  
Date: July 14, 2022

**UTILITY F**  
O.U.P.S. Reference No.  
Date: July 14, 2022

**UTILITY F**  
O.U.P.S. Reference No.  
Date: July 14, 2022

**PRELIMINARY**  
NOT FOR  
CONSTRUCTION

HENRIETTA HOMES

FAMICOS FOUNDATION

CLEVELAND, OHIO

SCATTERED SITES

1546 E. 65TH ST.  
SITE PLAN  
(SITE #4)

2023-01-03 -  
ZONING ONLY

**City Architecture**  
12206 Larchmont Boulevard  
Cleveland, OH 44130  
phone: 216.881.2444  
www.cityarch.com

Project Number:  
22029

Sheet Number:

**AS1.4**

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# Public Hearing

**Calendar No. 23-017:**

**6715 Lawnview Ave.**

**Ward 7**



Famicos Foundation, proposes to erect a 2-story frame single-family residence with a detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 357.06(a) which states required rear yard is 19.3 feet and the appellant is proposing 14.9 feet.
2. Section 355.04(b) which states that the required minimum lot width is 40 feet and the appellant is proposing 35 feet.
3. Section 341.02(b) which states City Planning approval is required before issuance of building permit.





# Public Hearing

---

Calendar No. 23-017:

6715 Lawnview Ave.

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY





## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the rear yard and minimum lot width requirements of the zoning code.

To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.

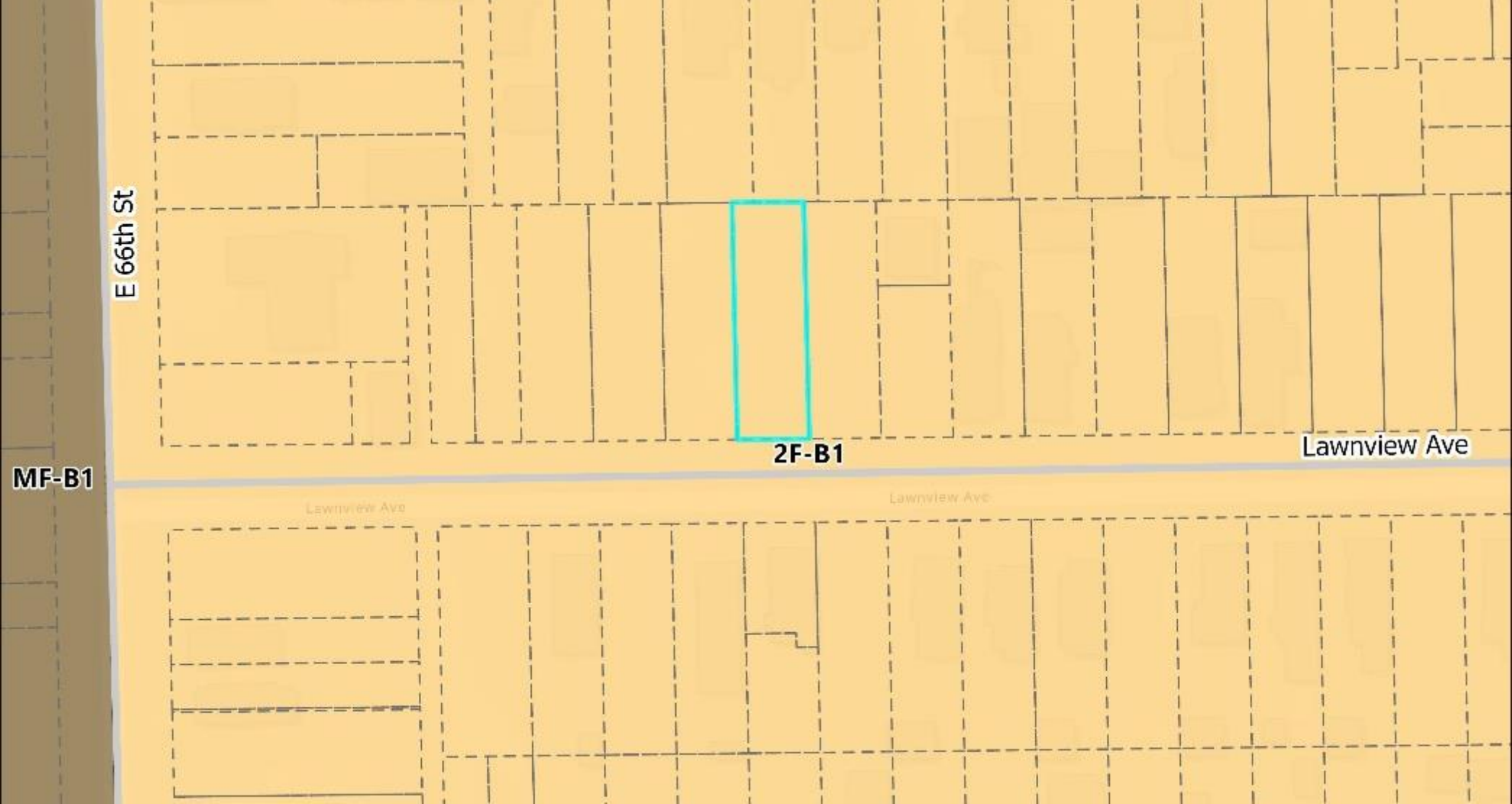


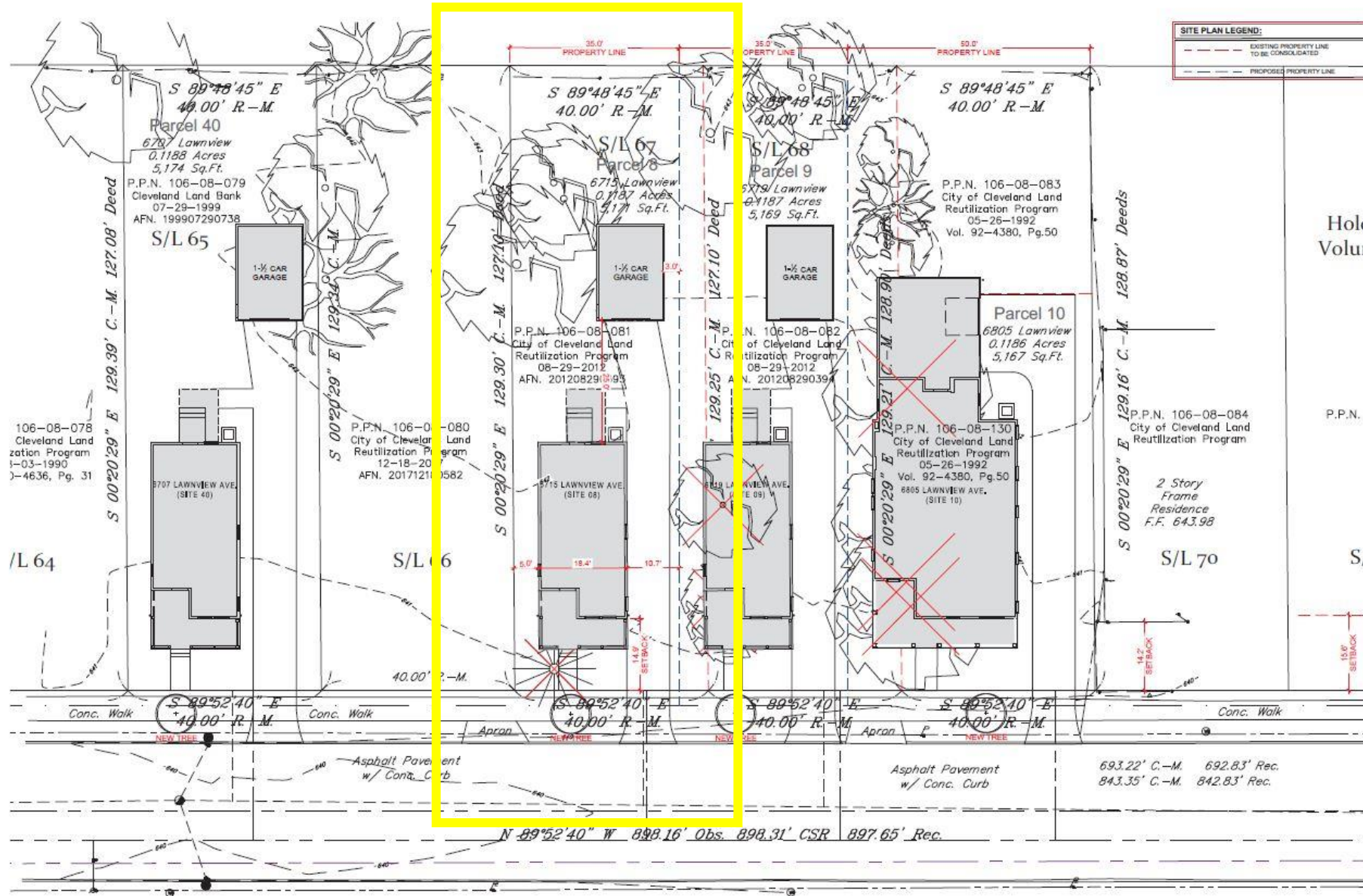












PRELIMINARY  
NOT FOR  
CONSTRUCTION

HENRIETTA HOMES

FAMICOS FOUNDATION

CLEVELAND, OHIO

SCATTERED SITES

Issue:  
2023-01-03 - FOR PERMIT

6715 LAWNVIEW AVE.  
SITE PLAN  
(SITE #8)

2023-01-03 -  
ZONING ONLY

City Architecture

12255 Larchmont Boulevard  
Cleveland, OH 44130  
phone 216.881.2444  
www.cityarch.com

Project Number:  
22029

Sheet Number:

AS1.8

LAWNVIEW AVENUE N.E. 50'  
(FORMERLY ASTOR AVENUE)

SITE PLAN

1" = 10'-0"  
ZONING: 2F-B1  
AVERAGE SETBACK WITHIN 100' = 29.8/2 = 14.9'

T.B.M. #1  
Top of Hill at Hydrant  
Elevation - 543.43



# Public Hearing

**Calendar No. 23-018:**

**6719 Lawnview Ave.**

**Ward 7**



Famicos Foundation, proposes to erect a 2-story frame single-family residence with detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 357.06(a) which states the required front yard setback is 19.3'; proposing 14.9'. Please note that the Board of Zoning Appeals is limited in its ability to grant a front yard variance unless certain conditions exist as described in Section 329.04(c)(1) of the Cleveland Codified Ordinances.
2. Section 355.04 (b) which states minimum lot width of 40' is required; proposing 35'.
3. Section 353.05 which states that an accessory garage shall not be less than 14.5 feet from a main building on adjacent lot and the appellant is proposing 9 feet.
4. Section 341.02(b) which states City Planning approval is required before issuance of building permit.



# Public Hearing

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Calendar No. 23-018:

6719 Lawnview Ave.

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**





## HISTORY OF THE PROPERTY





## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the front yard setback, minimum lot width, and accessory garage requirements of the zoning code.

To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.

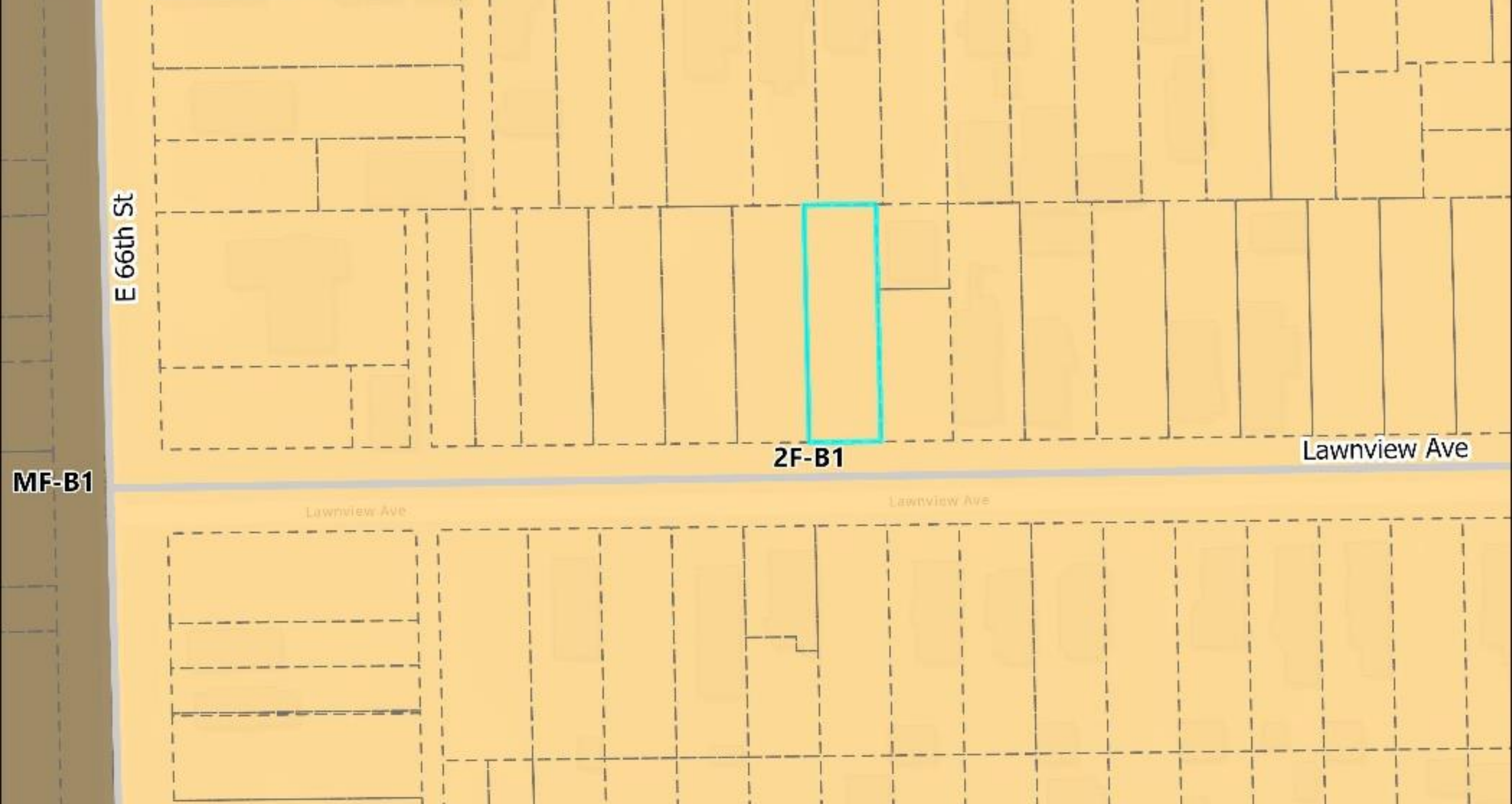




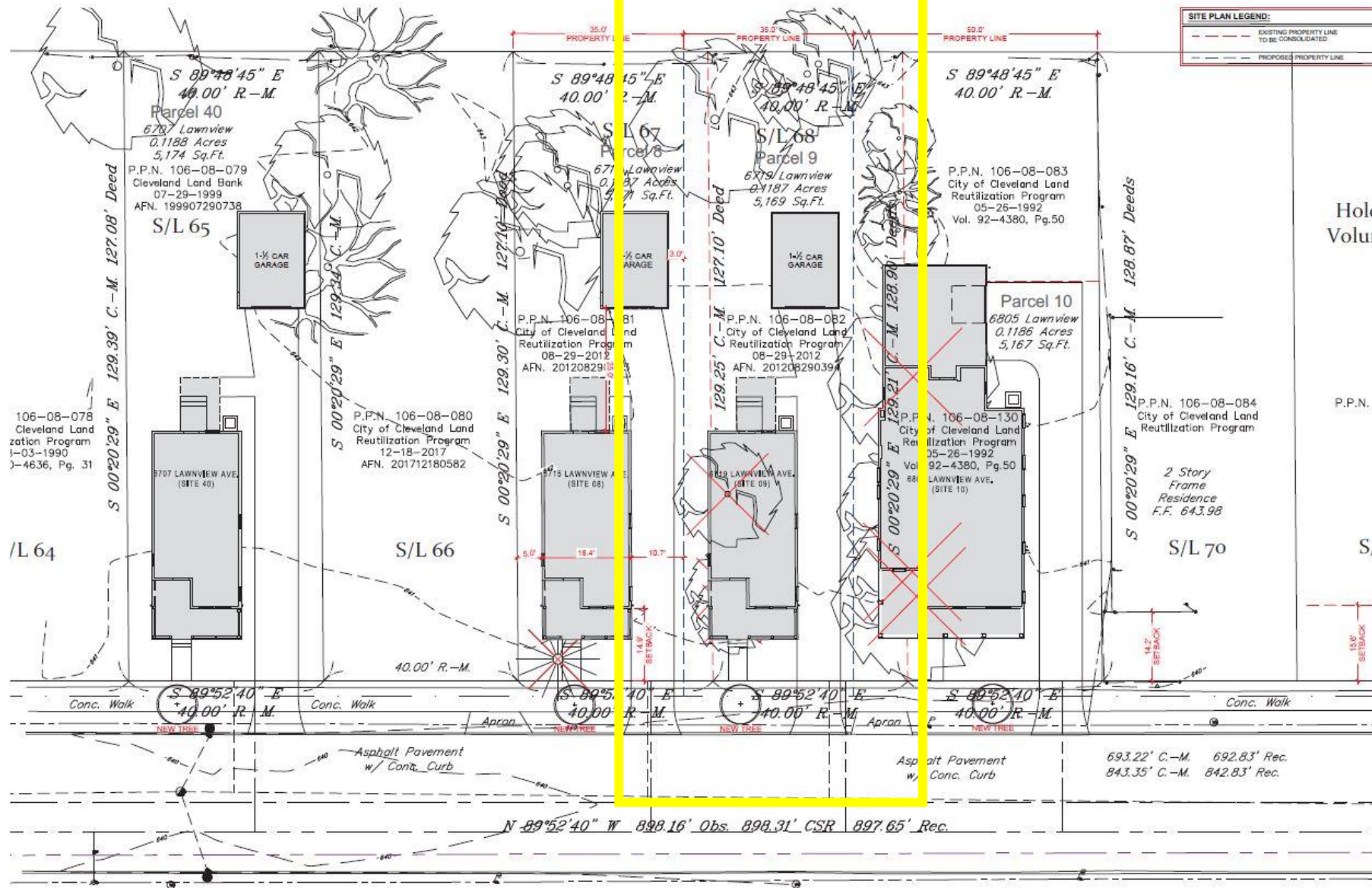








MF-B1



PRELIMINARY  
NOT FOR  
CONSTRUCTION

HENRIETTA HOMES

FAMICOS FOUNDATION

CLEVELAND, OHIO  
SCATTERED SITES

Issue
2023-01-03 - FOR PERMIT

6715 LAWNVIEW AVE.  
SITE PLAN  
(SITE #8)

2023-01-03 -  
ZONING ONLY

City Architecture

12255 Larchmead Boulevard  
Cleveland, OH 44130  
phone 216.881.2444  
www.cityarch.com

Project Number:  
22029

Sheet Number:

AS1.8

LAWNVIEW AVENUE N.E. 50'  
(FORMERLY ASTOR AVENUE)

SITE PLAN

1" = 10'-0"  
ZONING: 2F-B1  
AVERAGE SETBACK WITHIN 100' = 29.8/2 = 14.9'



# Public Hearing

**Calendar No. 23-020:**

**7408 Melrose Ave**

**Ward 7**



Famicos Foundation, proposes to erect a 2-story frame single-family residence with detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 355.04(b) which states that a minimum lot width of 40 feet is required where the appellant is proposing 38.15 feet.
2. Section 357.06(a) which states that the required front yard setback is 24 feet and the appellant is proposing 20.1 feet. Please note that the Board of Zoning Appeals is limited in its ability to grant a front yard variance unless certain conditions exist as described in Section 329.04(c)(1) of the Cleveland Codified Ordinances.
3. Section 341.02(b) which states City Planning approval is required before issuance of building permit.



# Public Hearing

Calendar No. 23-020:

7408 Melrose Ave

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**





## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the minimum lot width and front yard setback requirements of the zoning code.

To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.



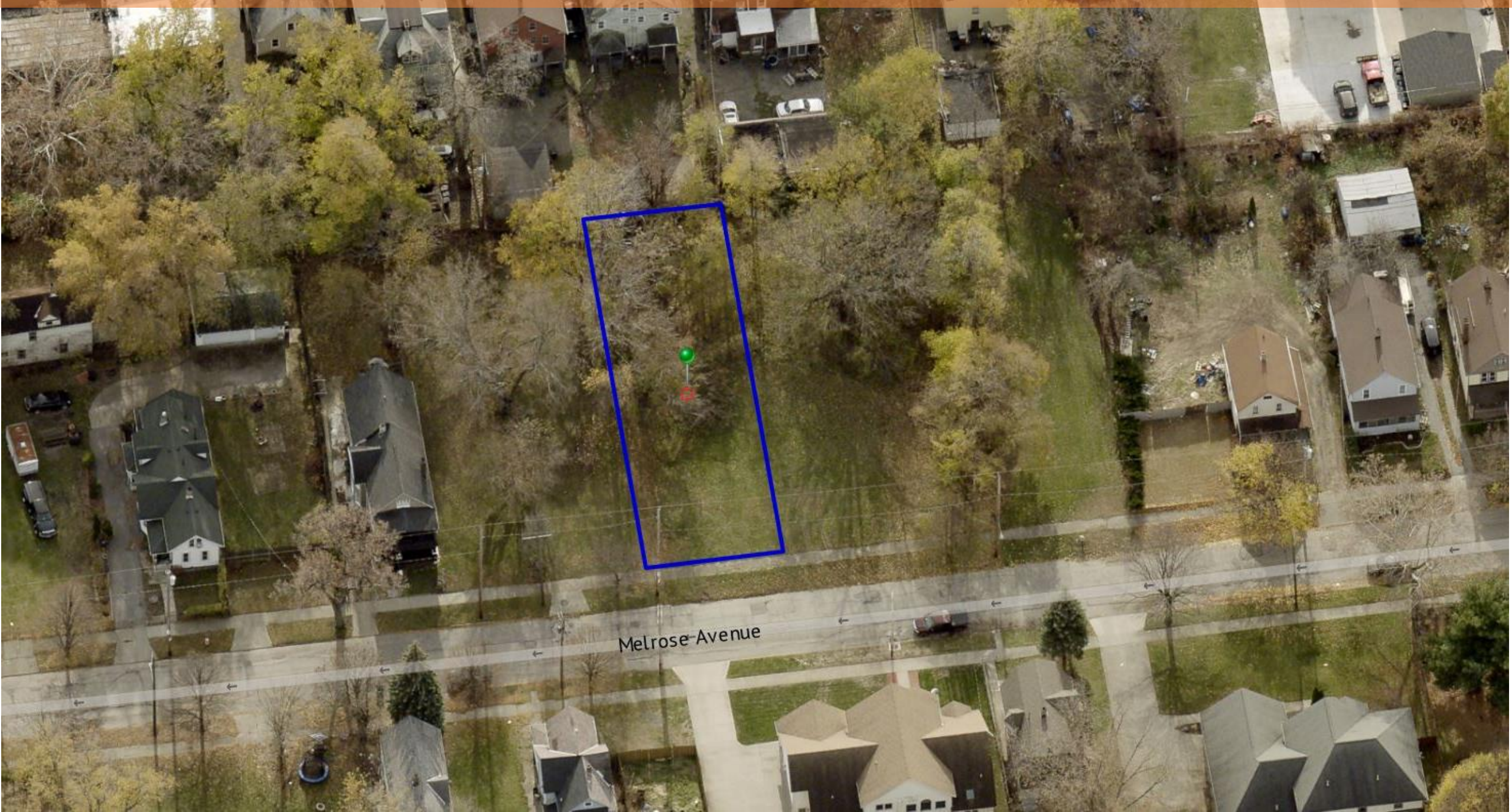




**Calendar No. 23-020:**

**7408 Melrose Ave.**

**Ward 7**





Melrose Ave

**2F-B1**

**75th Pl**



**SITE PLAN LEGEND:**  
 - - - - - EXISTING PROPERTY LINE TO BE CONSOLIDATED  
 - - - - - PROPOSED PROPERTY LINE

**PRELIMINARY**  
 NOT FOR  
 CONSTRUCTION

**HENRIETTA HOMES**  
 FAMICOS FOUNDATION  
 CLEVELAND, OHIO  
 SCATTERED SITES

2023-01-03 - FOR PERMIT

**7408 MELROSE AVE.**  
**SITE PLAN**  
**(SITE #36)**

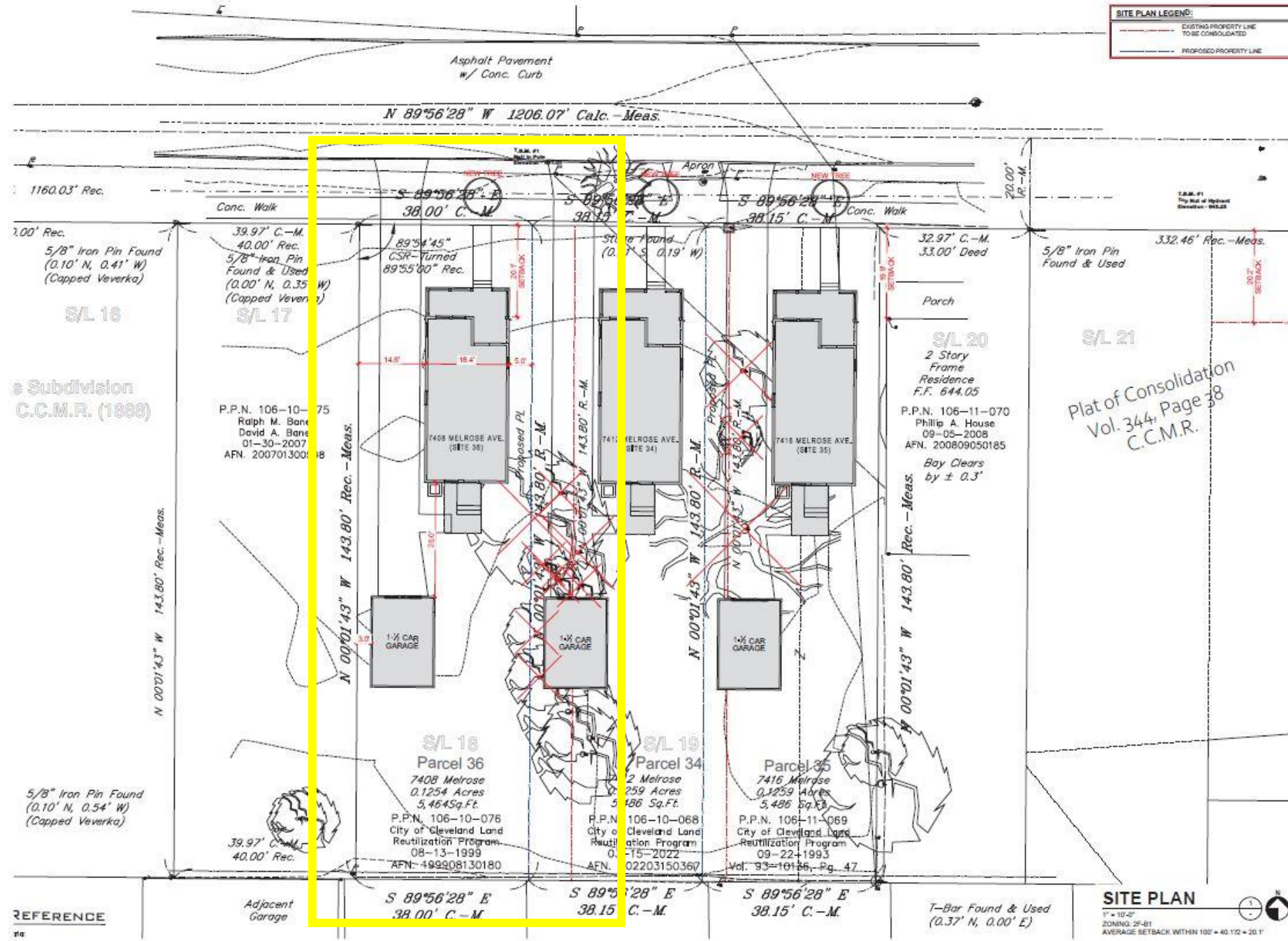
**2023-01-03 - ZONING ONLY**

**City Architecture**  
 12205 Larchmont Boulevard  
 Cleveland, OH 44120  
 phone 216.861.2444  
 www.cityarch.com

Project Number:  
**22029**  
 Sheet Number:

**AS1.36**

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**REFERENCE**  
 110

**SITE PLAN**  
 1" = 10'-0"  
 ZONING: 2F-B1  
 AVERAGE SETBACK WITHIN 100' = 40.172' ± 30.1'



# Public Hearing

**Calendar No. 23-021:**

**7412 Melrose Ave.**

**Ward 7**



Famicos Foundation, proposes to erect a 2-story frame single-family residence with detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 355.04(b) which states that a minimum lot width of 40 feet required and the appellant is proposing 38.15 feet.
2. Section 357.06(a) which states that the required front yard setback is 24 feet and the appellant is proposing 20.1 feet. Please note that the Board of Zoning Appeals is limited in its ability to grant a front yard variance unless certain conditions exist as described in Section 329.04(c)(1) of the Cleveland Codified Ordinances.
3. Section 341.02(b) which states City Planning approval is required before issuance of building permit.





# Public Hearing

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Calendar No. 23-021:

7412 Melrose Ave.

Ward 7



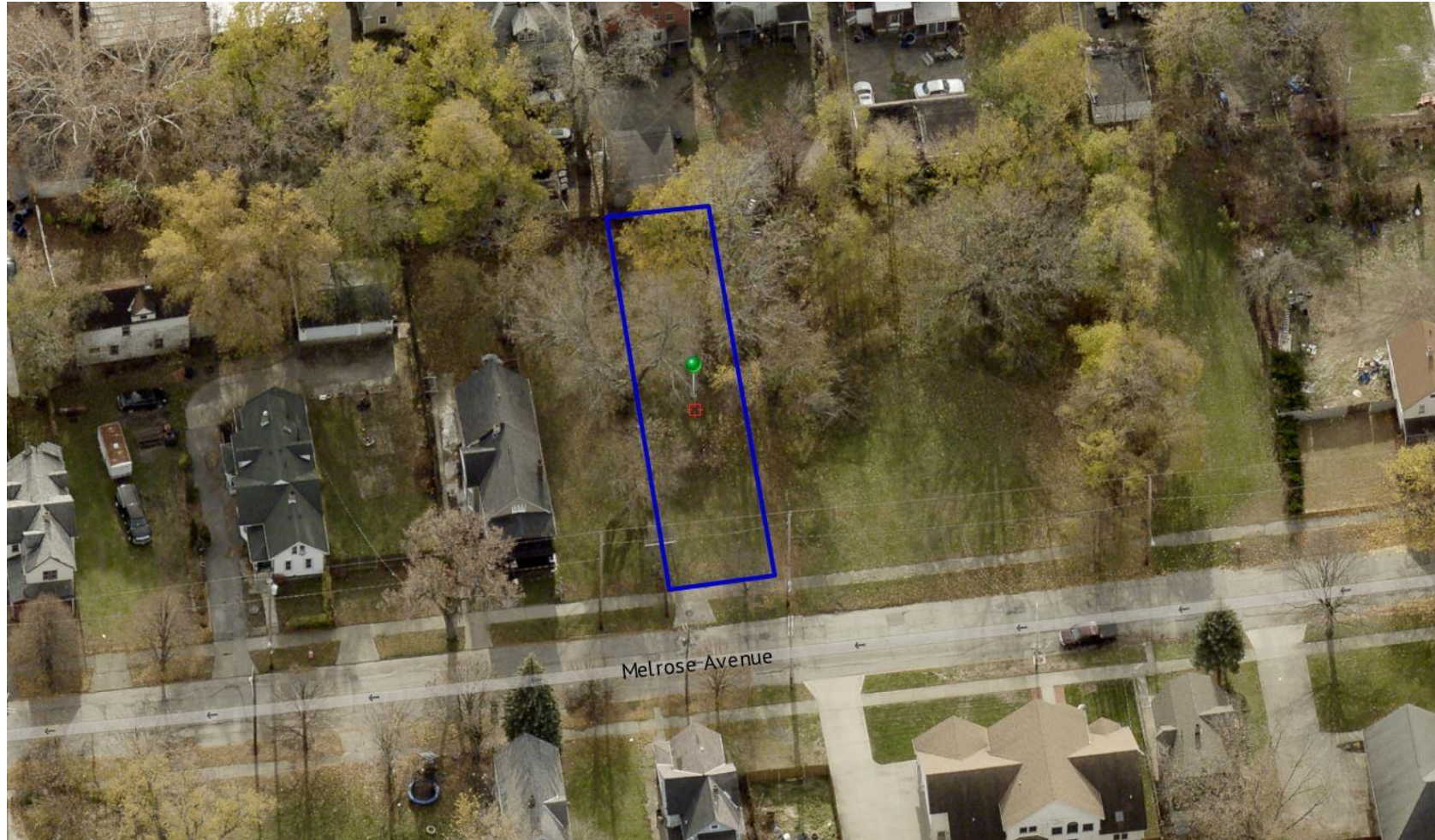
## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the minimum lot width and front yard setback requirements of the zoning code.

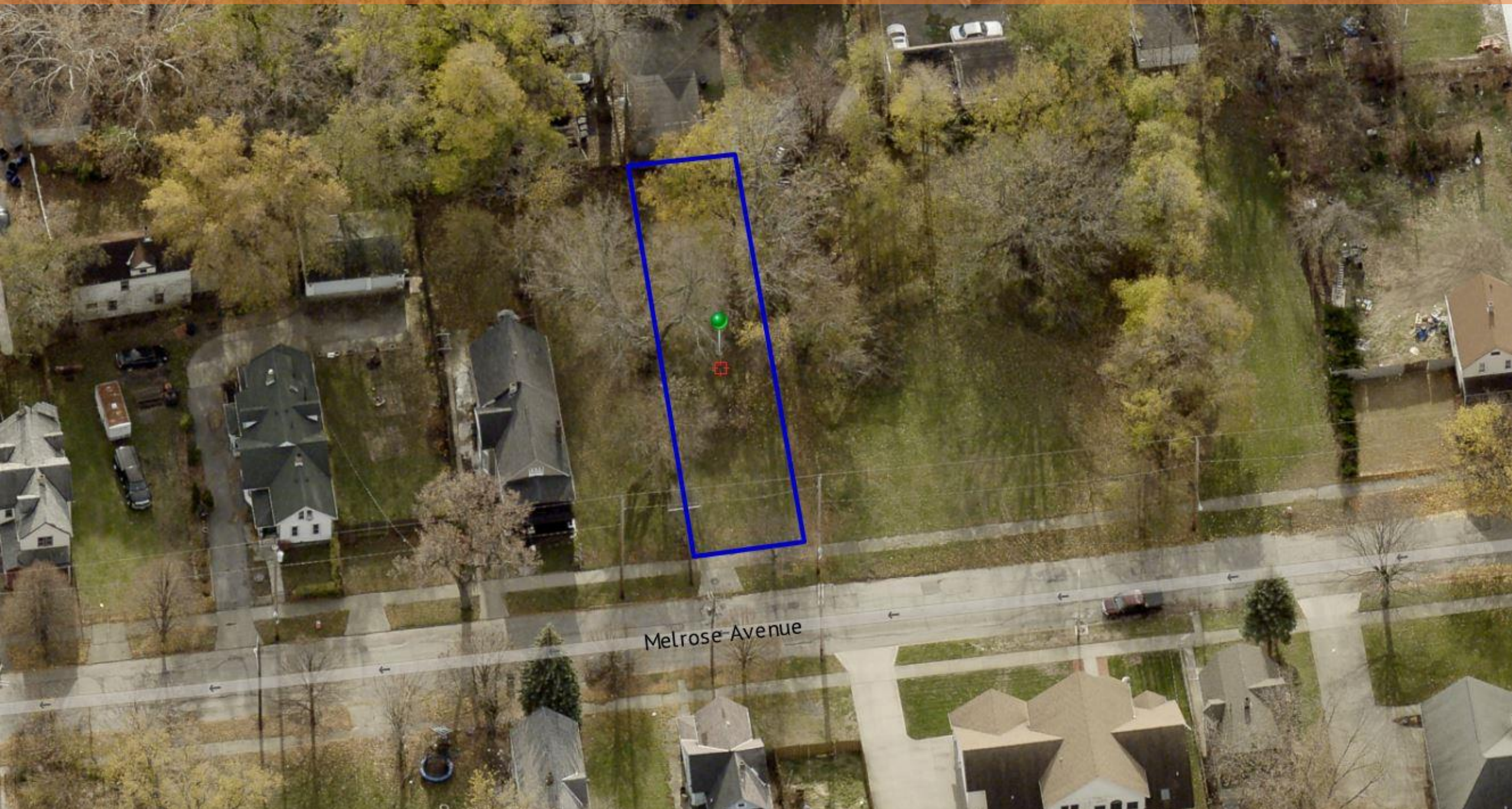
To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.

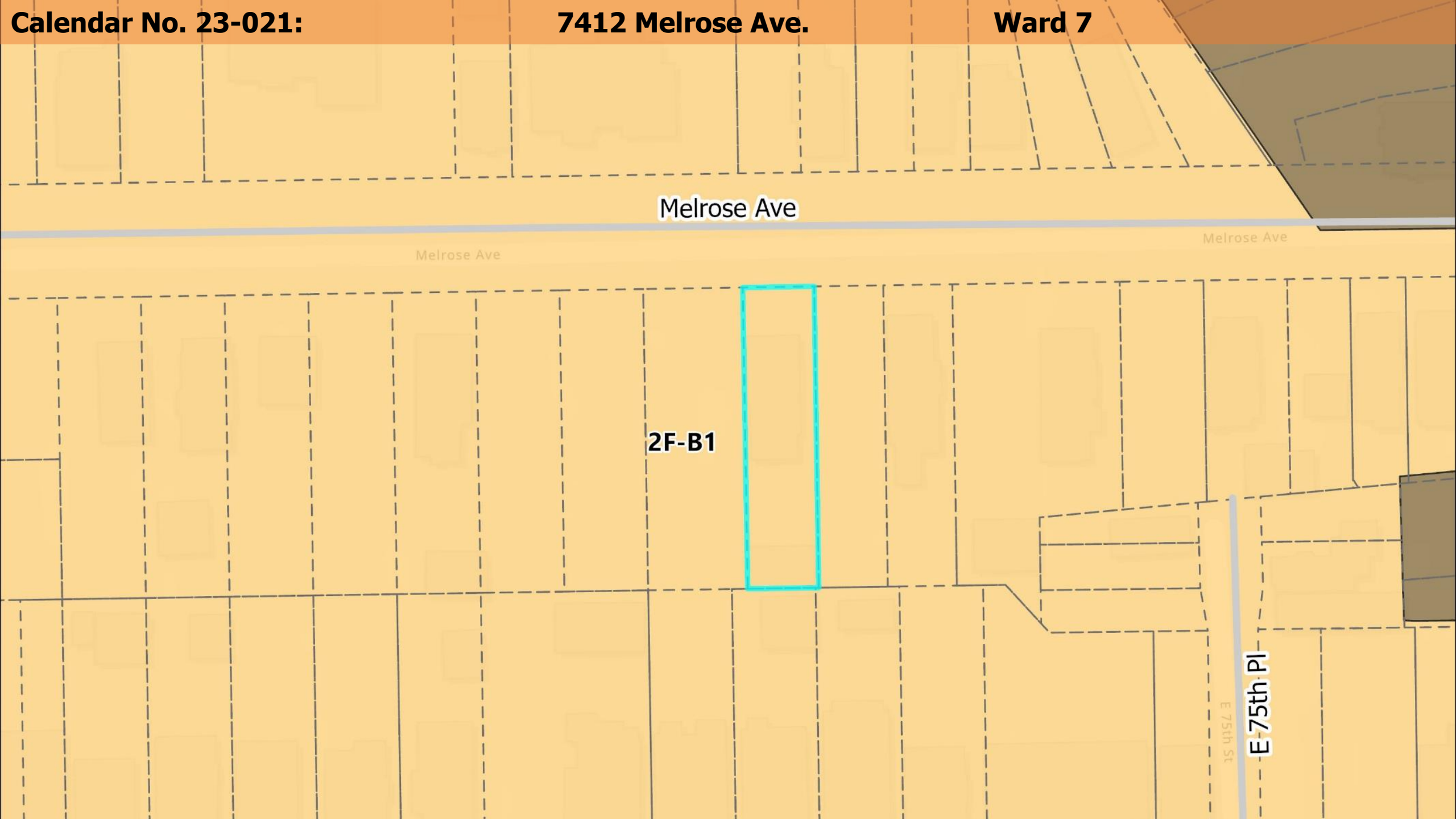












**Calendar No. 23-021:**

**7412 Melrose Ave.**

**Ward 7**

Melrose Ave

Melrose Ave

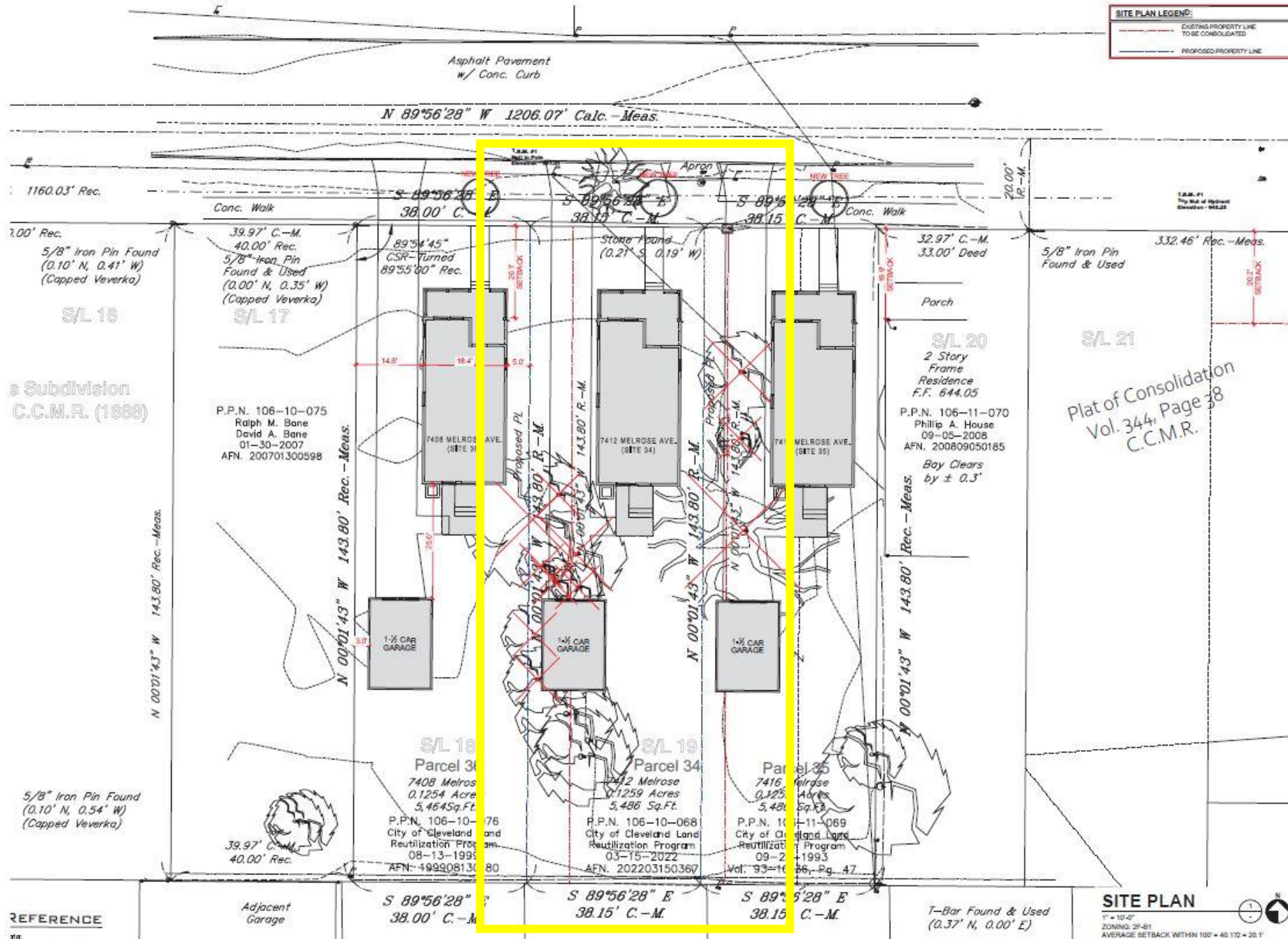
Melrose Ave

**2F-B1**

E 75th St

**E 75th Pl**





**SITE PLAN LEGEND:**  
--- EXISTING PROPERTY LINE TO BE CONSOLIDATED  
--- PROPOSED PROPERTY LINE

**PRELIMINARY**  
NOT FOR  
CONSTRUCTION

**HENRIETTA HOMES**  
FAMICOS FOUNDATION  
SCATTERED SITES  
CLEVELAND, OHIO

ISSUE
2023-01-03 - FOR PERMIT

7408 MELROSE AVE.  
SITE PLAN  
(SITE #36)

2023-01-03 -  
ZONING ONLY

**City Architecture**  
12205 Larchmont Boulevard  
Cleveland, OH 44120  
phone 216.861.2444  
www.cityarch.com

Project Number:  
22029  
Sheet Number:

**AS1.36**

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**REFERENCE**  
110

**SITE PLAN**  
1" = 10'-0"  
ZONING: 2F-B1  
AVERAGE SETBACK WITHIN 100' = 40.172' ± 30.1'



# Public Hearing

**Calendar No. 23-022:**

**7416 Melrose Ave.**

**Ward 7**



Famicos Foundation, proposes to erect a 2-story frame single-family residence with detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant is requesting relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 355.04(b) which states a minimum lot width of 40 feet is required and the appellant is proposing 38.15 feet.
2. Section 357.06(a) which states that the required front yard setback is 24 feet and the appellant is proposing 20.1'. Please note that the Board of Zoning Appeals is limited in its ability to grant a front yard variance unless certain conditions exist as described in Section 329.04(c)(1) of the Cleveland Codified Ordinances.
3. Section 341.02(b) which states City Planning approval is required before issuance of building permit.





# Public Hearing

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Calendar No. 23-022:

7416 Melrose Ave.

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting area variances from the rear yard and minimum lot width requirements of the zoning code.

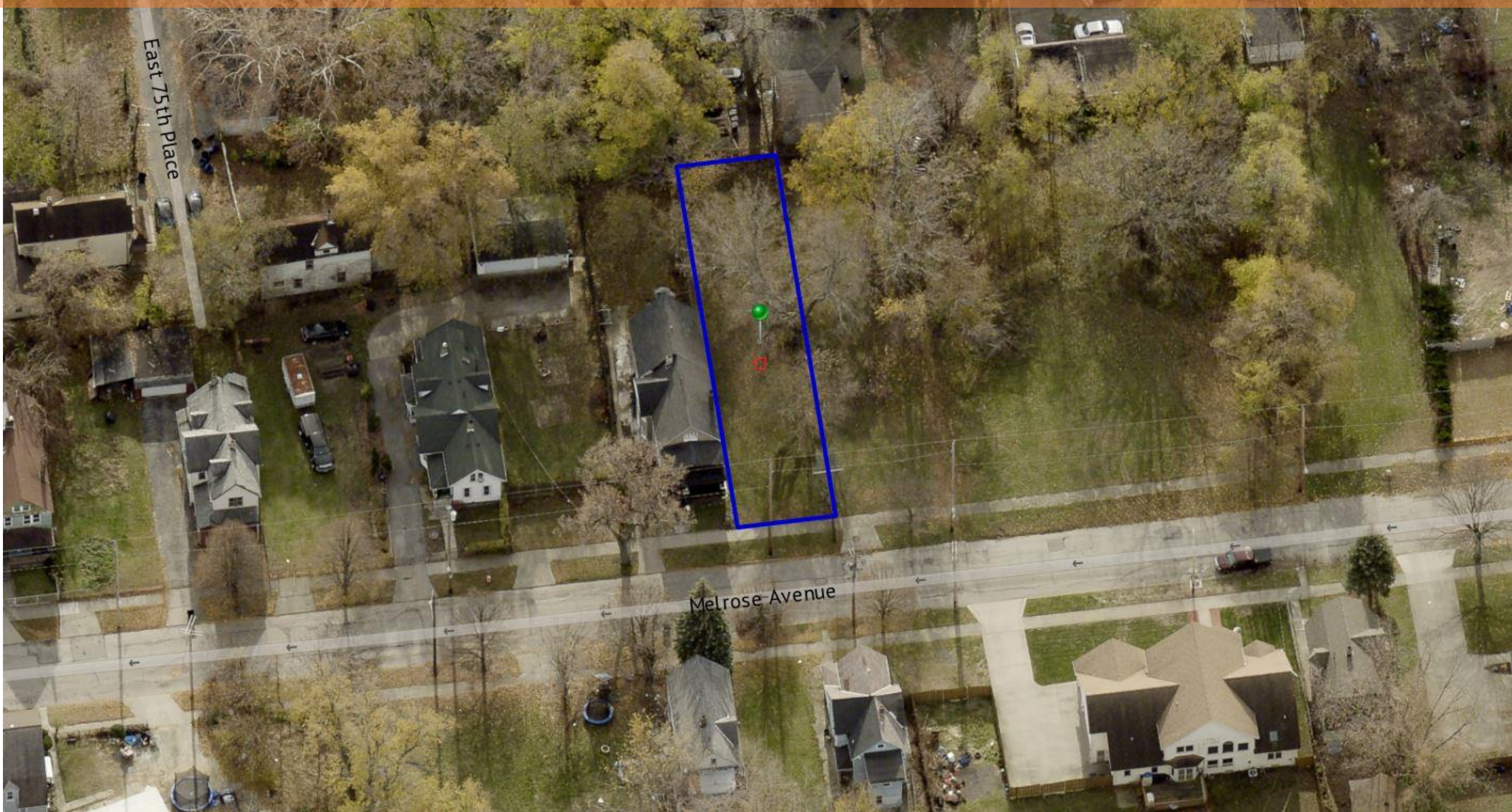
To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.

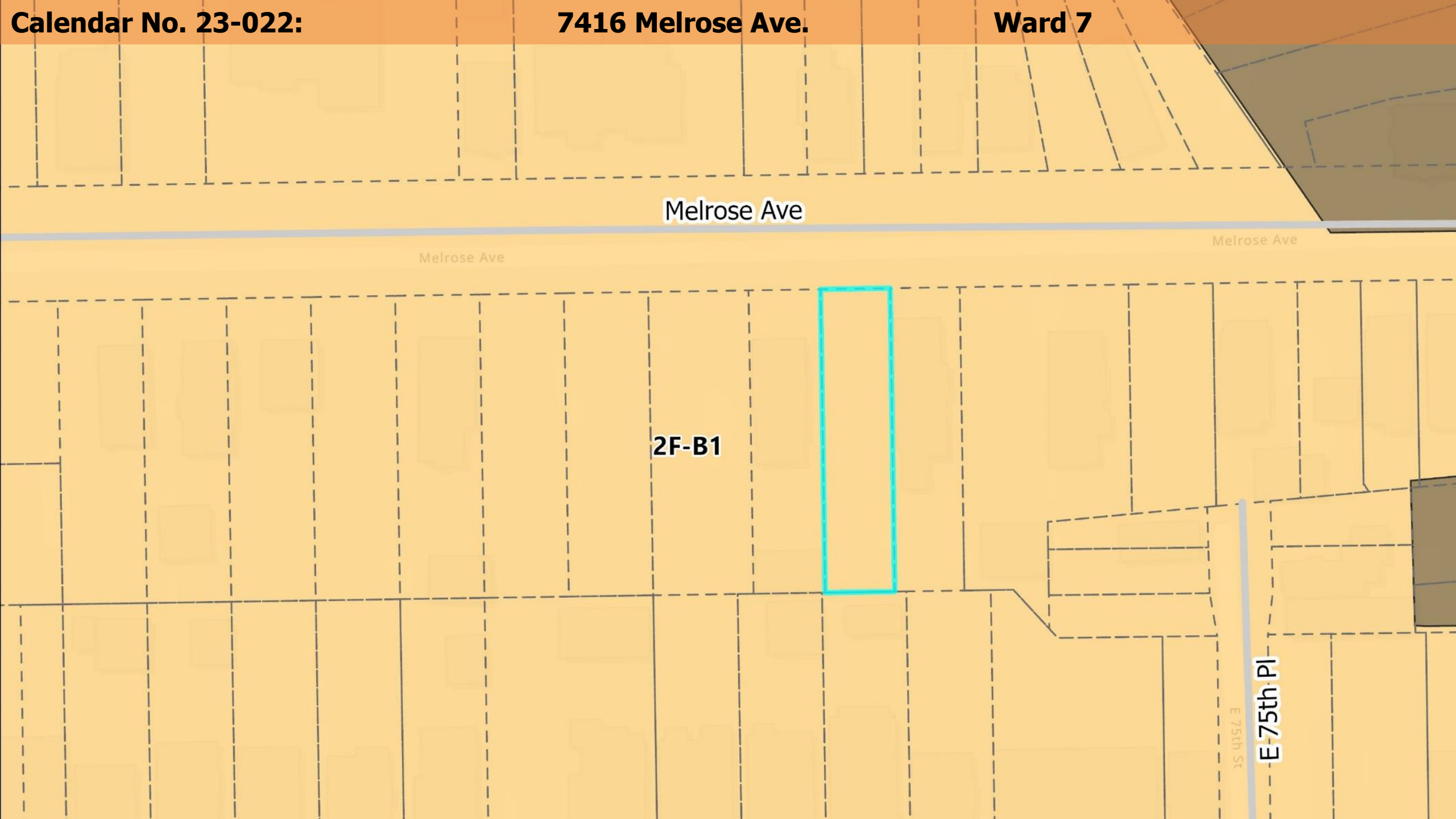












**Calendar No. 23-022:**

**7416 Melrose Ave.**

**Ward 7**

Melrose Ave

Melrose Ave

Melrose Ave

**2F-B1**

E 75th St

**E 75th Pl**







# Public Hearing

**Calendar No. 23-019:**

**1694 E 70<sup>th</sup> St.**

**Ward 7**



Famicos Foundation, proposes to erect an 2-story frame single-family residence with detached garage on a City of Cleveland land bank lot located in a B1 Two-Family Residential District. The appellant

1. Section 355.04(b) which states minimum required lot width is 40 feet and the appellant is proposing 35 feet.
2. Section 341.02(b) which states City Planning approval is required before issuance of building permit.





# Public Hearing

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Calendar No. 23-019:

1694 E 70<sup>th</sup> St.

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting an area variance from the minimum lot width requirements of the zoning code.

To obtain the area variance, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variance will not be contrary to the purpose and intent of the zoning code.









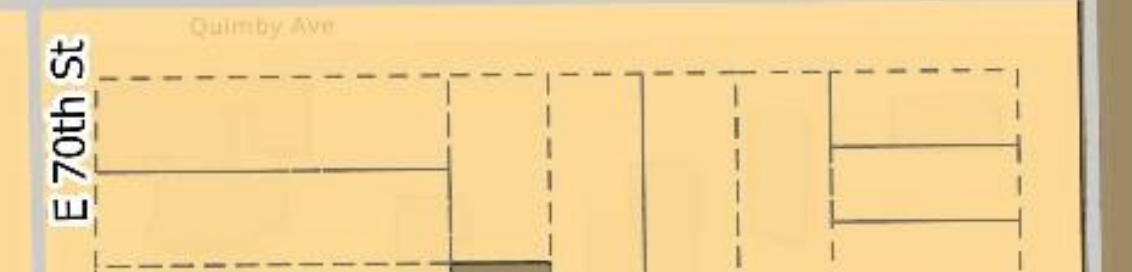
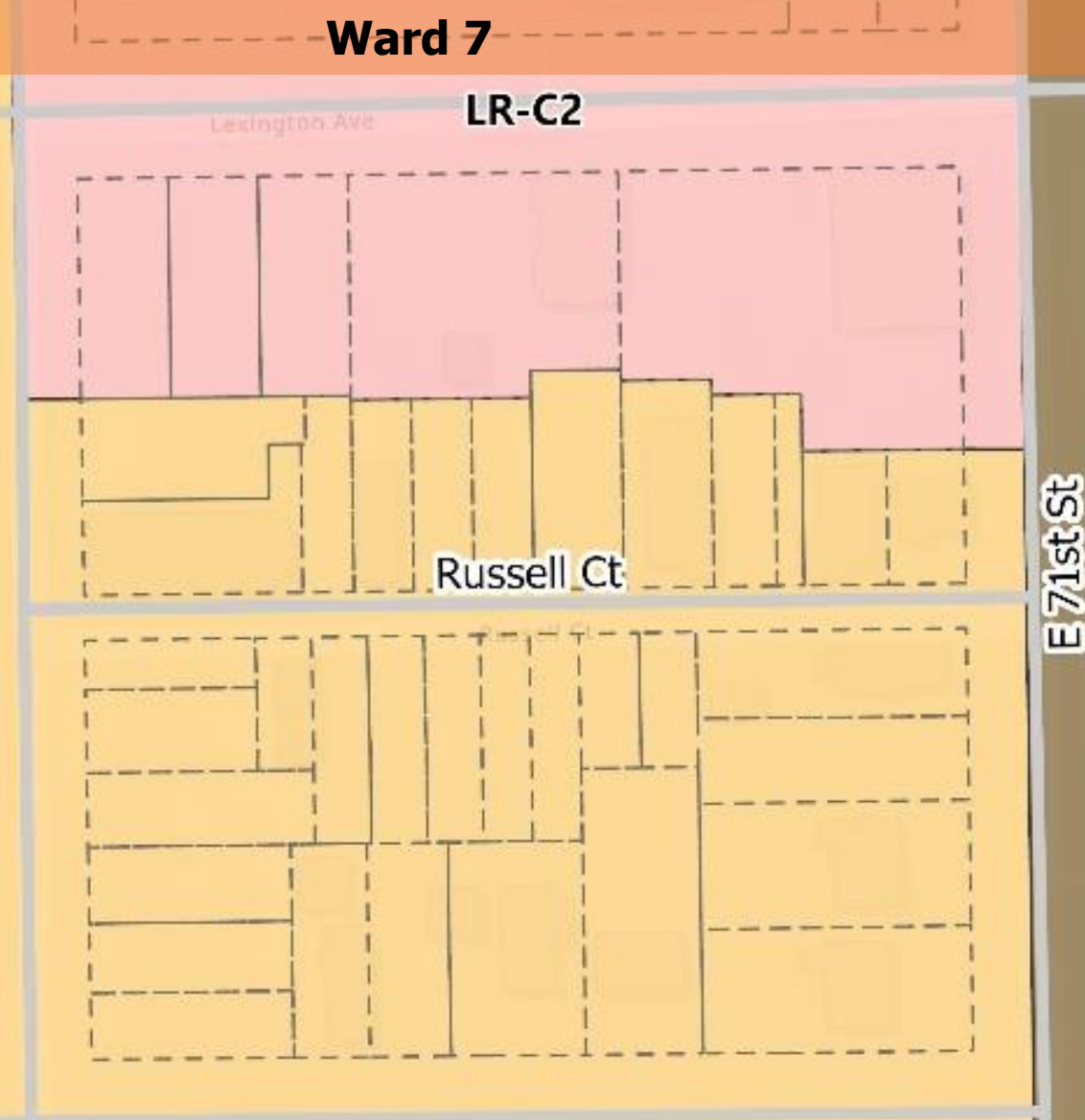
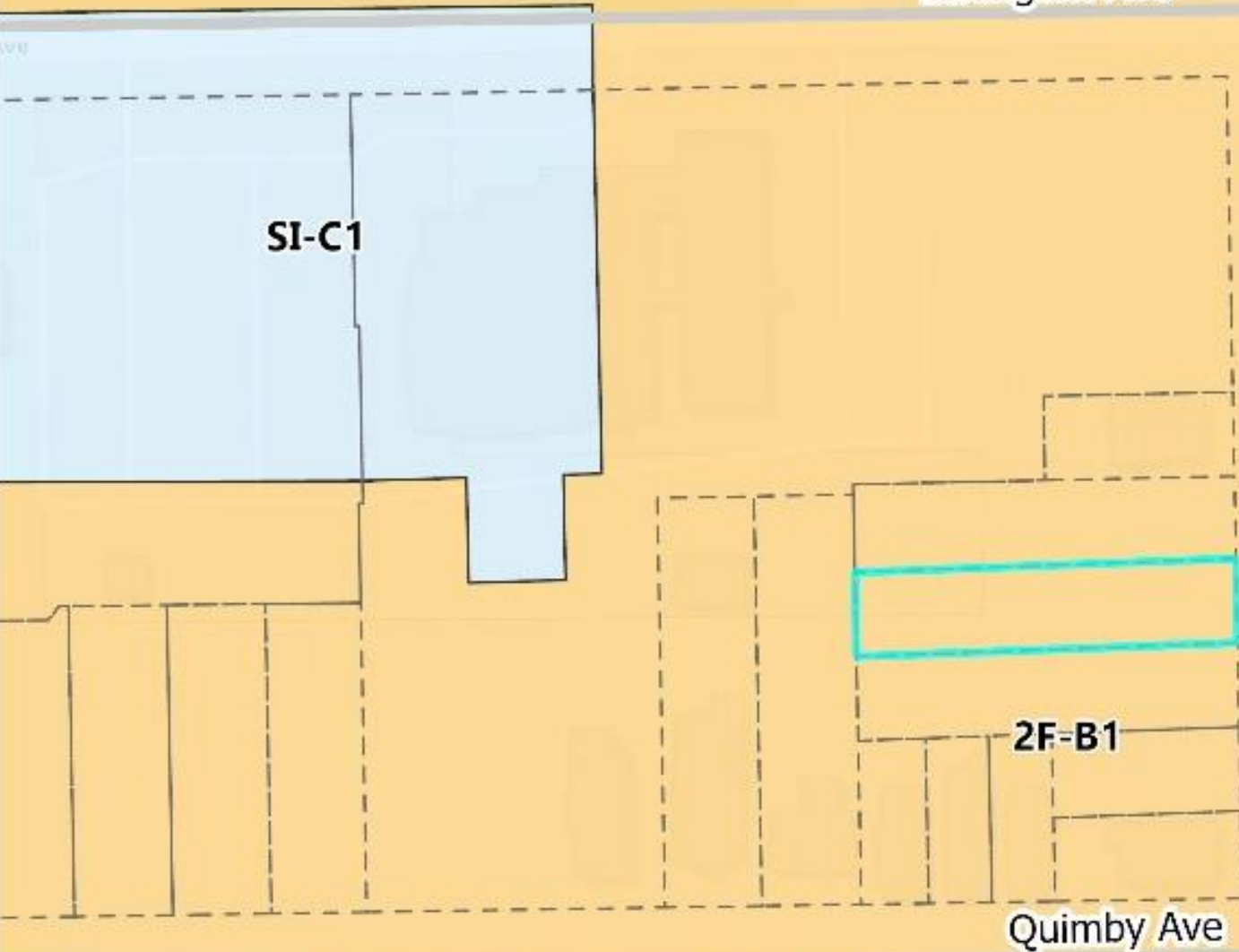
9th Place

Quimby Avenue

East 70th Street

Russell Court











# Public Hearing

**Calendar No. 23-025:**

**1698 E 70<sup>th</sup> St.**

**Ward 7**



Famicos Foundation, proposes to erect an 18'-4" x 36'-6" 2 story frame single-family residence with detached garage on a Cuyahoga County Land Reutilization Corp.

1. Section 355.04(b) which states minimum lot width of 40 feet is required and the appellant is proposing 35 feet.
2. Section 341.02(b) which states City Planning approval is required before issuance of building permit.





# Public Hearing

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Calendar No. 23-025:

1698 E 70<sup>th</sup> St.

Ward 7



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting an area variance from the minimum lot width requirements of the zoning code.

To obtain the area variance, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variance will not be contrary to the purpose and intent of the zoning code.









Place

Quimby Avenue

East 70th Street

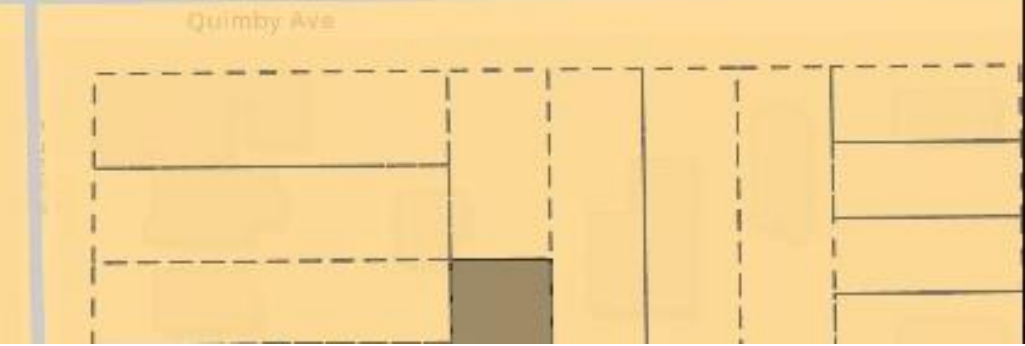
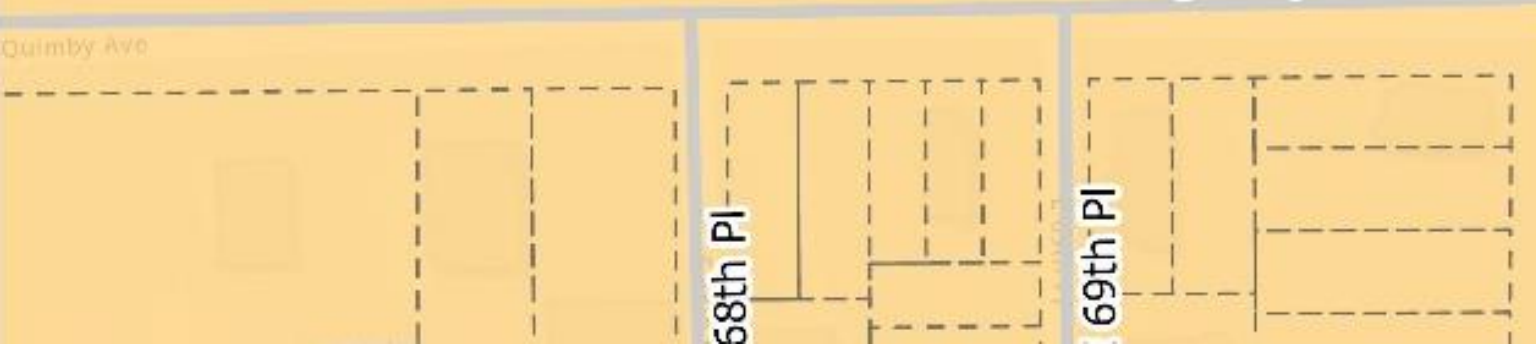
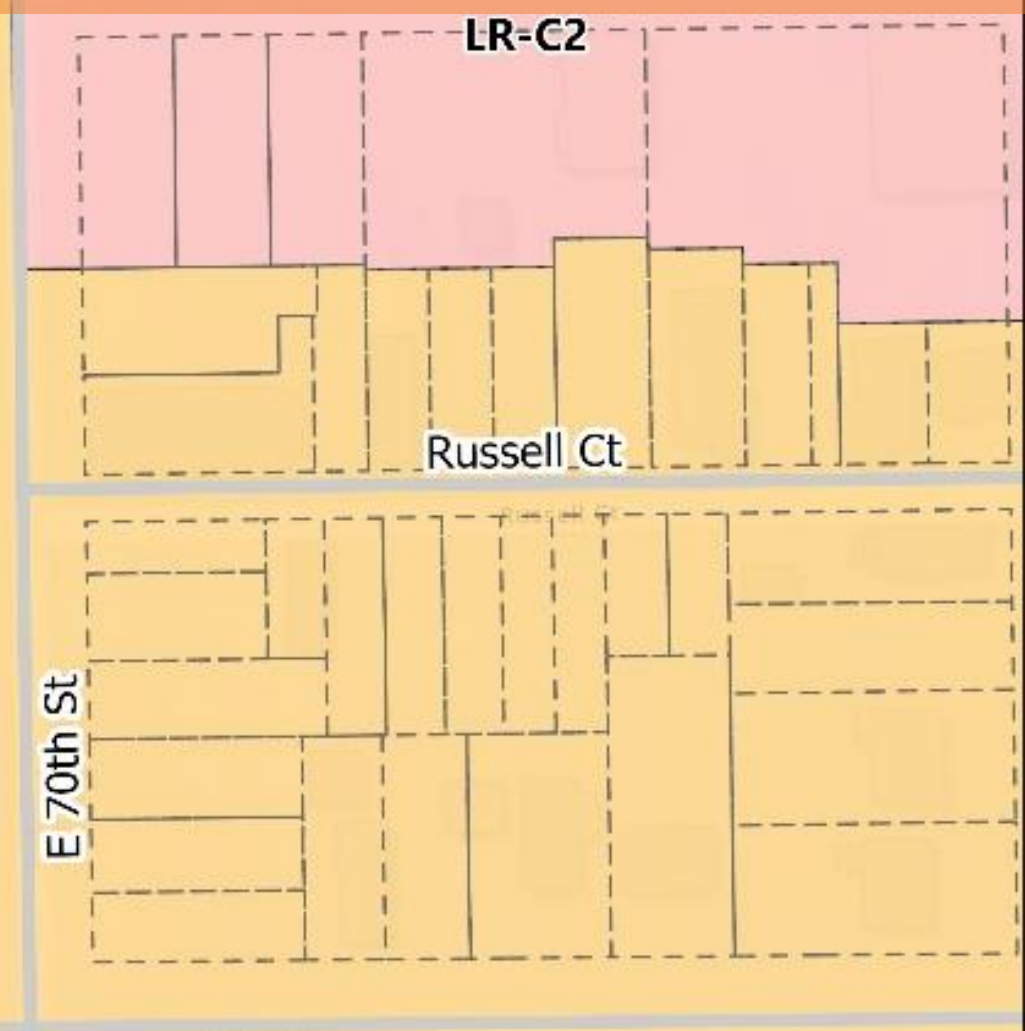
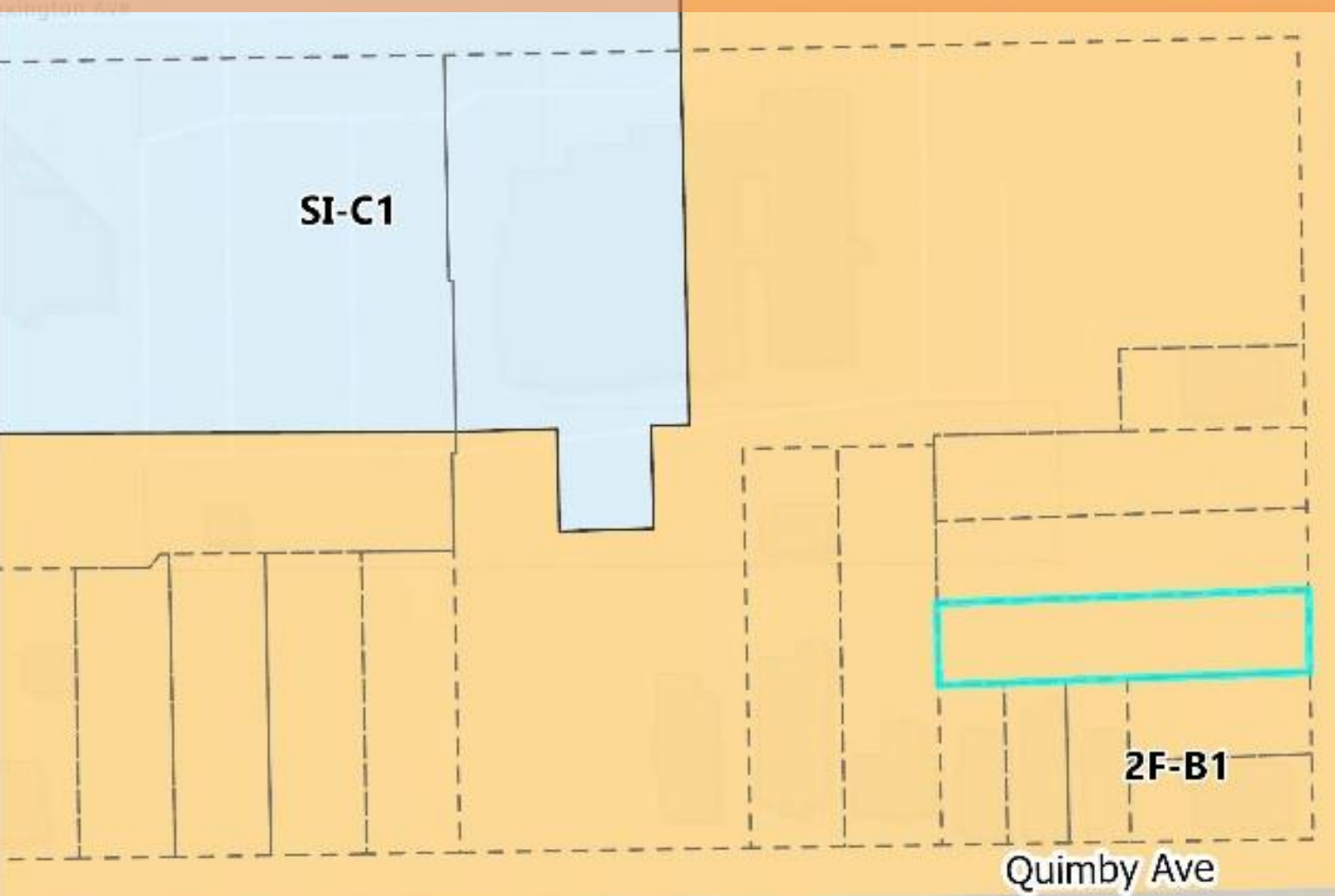
Russell Court



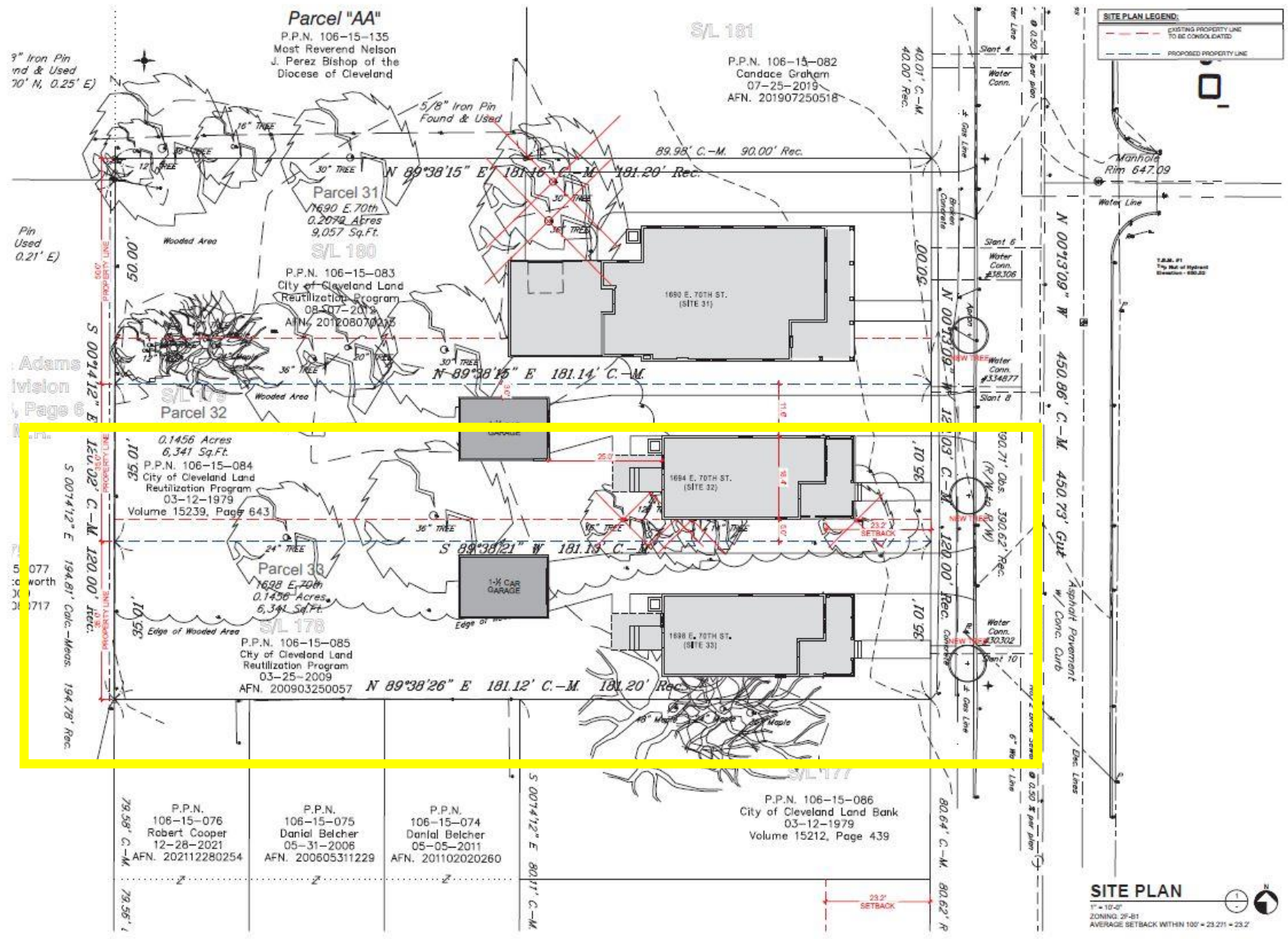
Calendar No. 23-025:

1698 E. 70<sup>th</sup> St

Ward 7







**PRELIMINARY**  
NOT FOR  
CONSTRUCTION

**HENRIETTA HOMES**  
FAMICOS FOUNDATION  
SCATTERED SITES  
CLEVELAND, OHIO

REMARK
2023-01-03 - FOR PERMIT

1694 E. 70TH ST.  
SITE PLAN  
(SITE #32)

2023-01-03 -  
ZONING ONLY

**City Architecture**  
12005 Larchmont Boulevard  
Cleveland, OH 44120  
phone 216.601.2444  
www.cityarch.com

Project Number:  
22029  
Sheet Number:

**AS1.32**

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# Public Hearing



**Calendar No. 22-232:**

**12503 Kinsman Ave.**

**Ward 4**

Davi & King. LLC, proposes to establish use as a carryout restaurant in a B1 Two-Family Residential District. The owner appeals for relief from the strict application of the following sections of the Cleveland Codified Ordinances:

1. Section 337.03 which states that carryout restaurant is not permitted in a Two-Family Residential District but is first permitted in Local Retail District per section 343.01.
2. Section 352.10 which states that a 6 foot wide landscape strip is required along Kinsman Rd. and E. 125 Street where the lot abuts streets and a 4 foot wide land scape strip is proposed.
3. Sections 352.08 through 352.12 which states that an 8 foot wide transition landscape strip providing at least 75% year round opacity is required at the side of property abutting residential district and a 3 foot wide strip is proposed. POSTPONED FROM JANUARY 23 AT THE REQUEST OF COUNCILMEMBER DEBORAH GRAY FOR FURTHER REVIEW.





# Public Hearing

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Calendar No. 22-232:

12503 Kinsman Ave.

Ward 4



## SWEARING IN ALL WHO ARE PRESENT FOR THIS CASE:

DO YOU SWEAR OR AFFIRM THAT THE TESTIMONY YOU ARE ABOUT TO GIVE  
IS THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

**Please Raise Your Hand.**  
**Reply with I DO, YOUR NAME and YOUR ADDRESS.**



## HISTORY OF THE PROPERTY







## LEGAL STANDARD

Madam Chair, Members of the Board, Appellant is requesting a use variance and area variances from the landscape requirements of the zoning code.

To obtain the use variance, Appellant must prove that denying the request:

Will result in an **unnecessary hardship** particular to the property such that there will be no economically feasible use of the property without the variance;

Will deprive the Appellant of substantial property rights; and

That granting the variance will not be contrary to the purpose and intent of the zoning code.

To obtain the area variances, Appellant must prove that denying the request:

1. Will create a **practical difficulty** not generally shared by other land or buildings in the same district;
2. Will deprive the Appellant of substantial property rights; and
3. That granting the variances will not be contrary to the purpose and intent of the zoning code.





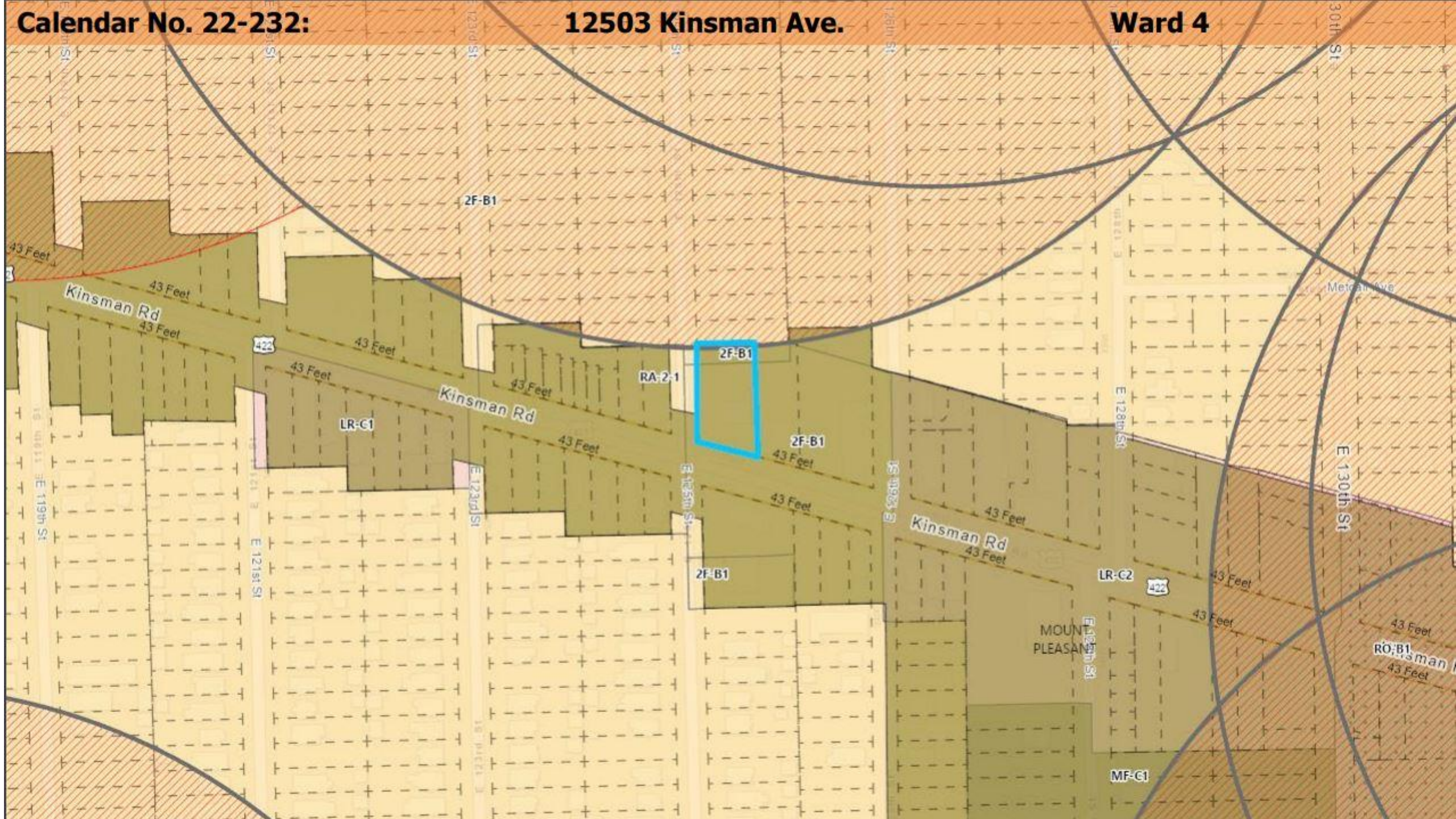




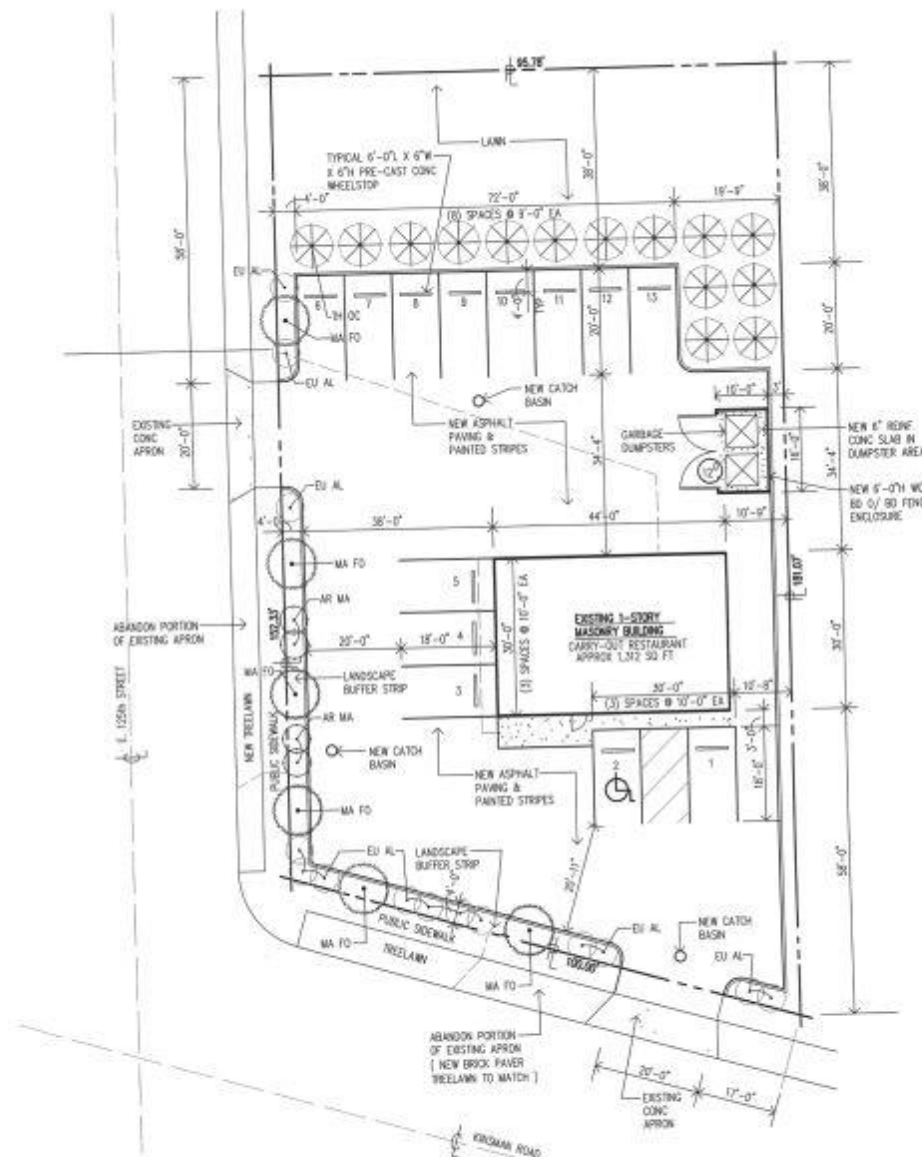
Calendar No. 22-232:

12503 Kinsman Ave.

Ward 4







**SITWORK:** OWNER SHALL OBTAIN & SUBMIT CIVIL ENGINEERING DRAWINGS FOR REVIEW AND APPROVAL SHOWING ALL BOUNDARIES, SITE GRADING, SITE DRAINAGE, & SITE LIGHTING.

**KEY PLAN**  
1/16" = 1'-0"



# Cleveland Board of Zoning Appeals

## Old Business

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## BOARD OF ZONING APPEALS

February 27, 2023

1. Cal. No. 22-213:	4100 Franklin Blvd.	(KB,TB,AF,NH, )~ <i>O'Leary request</i>
2. Cal. No. 23-005:	Public works/12714 Beachwood	(KB, TB, AF, NH, PR)
3. Cal. No. 23-006:	2161 W. 28 Street	(KB, TB ,AF, NH, PR)
4. Cal. No. 23-023:	2302 W. 6 <sup>th</sup> Street	(KB, TB, AF, NH, PR)
5. Cal. No. 23-024:	2296 W. 6 <sup>th</sup> Street	(KB, TB, AF ,NH, PR)
6. Cal. No. 22-226:	4750 Hinckley Ave.	(KB, TB, AF, NH, PR)
7. Cal. No. 23-008:	3611 Chatham Ave.	(KB,AF,NH,PR)~
8. Cal. No. 22-182:	1116 Auburn Ave.	(TB,AF,NH,PR)*
9. Cal. No. 22-224:	522 East 105 St.	(KB,TB, AF, NH,PR)~
10. Cal. No. 22-208:	2458 Tremont Ave.	(KB,TB,AF,NH, PR)
11. Cal. No. 22-186:	17426 Harvard Rd.	( KB,TB,AF,NH,PR)*
12. Cal. No. 22-018:	4420 East 156 St.	(KB,TB,AF,MB)* <i>REMINDER SENT</i>
13. Cal. No. 22-035:	5807 Detroit Ave.	(KB,TB,AF, MB)*** <i>req. rules sent</i>
14. Cal. No. 22-022:	1010 E. 146 St.	(KB, TB, AF, MB) <i>REMINDER SENT</i>
15. Cal. No. 22-41:	1453 W. 116 St.	(KB, TB, AF, MB)* <i>REMINDER SENT</i>
16. Cal. No. 21-203:	8502 Hough Ave.	(KB, TB, AF, MB)* <i>REMINDER SENT</i>
17. Cal. No. 21-202:	5001 Memphis	(KB, MB,AF)* <i>REMINDER SENT</i>
18. Cal. No. 21-177:	18403 Euclid Ave.	(KB, MB, AF)* <i>REMINDER SENT</i>
19. Cal. No. 21-091:	4157 Lorain Ave.	(D,KB,AF,MB)* <i>REMINDER SENT</i>

**AFFIRMATION:** none

**UPCOMING POSTPONEMENT:** NONE.

### **MISC-**

**Regarding the Board's decisions in Calendar Numbers 23-002 and 23-013( addition to 1975 Ford Rd).**-Laura Cyrocki, Charles Hoven have appealed to the Court of Common Pleas. Appeal documents are attached.

**Regarding Calendar Number 22-213: 4100 Franklin Blvd- LMM (drop-in center)** submitted their Security Plan this week. Ron O'Leary, the neighbor has requested an in-person public meeting to review said Security Plan. LMM's attorney has submitted a rebuttal. Both documents are attached.

~ Items received  
\* Pending the receipt of requested information by the Board.  
\*\*\* Request for Rehearing/Reconsideration.

**IN THE BOARD OF ZONING APPEALS  
CLEVELAND, OHIO**

In the Matter of Lutheran Metropolitan ) Calendar No. 22 213  
Ministry's Appeal Regarding Property )  
Located at 4100 Franklin Blvd., Cleveland, ) Motion for Public, In-Person Hearing  
Ohio 44113 ) To Discuss Appellant's Safety Plan

The Board of Zoning Appeals ("BZA") held a hearing on this matter on February 6, 2023. At the end of the hearing, the BZA voted to approve a variance for the property at 4100 Franklin Blvd., Cleveland, Ohio 44113 (the "Property.") As a condition of approving the variance, the BZA ordered Appellant Lutheran Metropolitan Ministry ("LMM") to submit a safety plan for the Property related to the change in use.

As a neighbor, I raised safety concerns as one of the reasons I objected to LMM's appeal in this matter. The safety plan that LMM will submit is an issue that the BZA must review and discuss at a public hearing where those affected can have the opportunity to comment. For this reason, I move the BZA to schedule a public hearing to discuss LMM's safety plan. The BZA must provide the required hearing notice to the neighbors who are affected by LMM's application. The BZA must also have its members present in-person at City Hall.

Respectfully submitted,

*/s/ Ronald J.H. O'Leary*

Ronald J.H. O'Leary  
4110 Franklin Blvd.  
Cleveland, Ohio 44113  
216.849.4346  
[roleary@olearylwc.com](mailto:roleary@olearylwc.com)

*Mr. O'Leary's Request*

**CERTIFICATE OF SERVICE**

I certify that I served a copy of this Motion for Public, In-Person Hearing To  
Discuss Appellant's Safety Plan by e-mail only on February 22, 2023 to:

Benjamin J. Ockner  
Counsel for Lutheran Metropolitan Ministry  
[bockner@bernsockner.com](mailto:bockner@bernsockner.com)

Mary Z. Cornely  
Counsel for the Board of Zoning Appeals  
[mcornely@clevelandohio.gov](mailto:mcornely@clevelandohio.gov)

Carolyn M. Downey  
Counsel for Building & Housing  
[cdowney@clevelandohio.gov](mailto:cdowney@clevelandohio.gov)

Respectfully submitted,

*/s/ Ronald J.H. O'Leary*

Ronald J.H. O'Leary  
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216.849.4346  
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BEFORE THE BOARD OF ZONING APPEALS  
CITY OF CLEVELAND, OHIO

Appeal of Lutheran Metropolitan Ministry : Calendar No. 22-213  
("LMM") From 5/13/2022 Notice of Non- :  
Conformance Of Youth Drop-In Center : LMM's Response to Motion for Public,  
("YDIC") At 4100 Franklin Blvd. : In-Person Hearing On Safety Plan

During the BZA's February 6, 2023, hearing in this matter, LMM described various specific safety measures it would take in connection with the YDIC. C.B.O. Vanover suggested that LMM provide a safety plan memorializing those measures. In approving the variance allowing the YDIC, the BZA required LMM to provide such a safety plan. LMM has complied with that requirement.

Now, more than two weeks after the BZA hearing, one of the participants, Mr. O'Leary, has moved the BZA to conduct a "public, in-person hearing on the safety plan." In his motion, Mr. O'Leary insists that the BZA "must review and discuss [the safety plan] at a public hearing where those affected can have the opportunity to comment;" that it "must provide the required hearing notice to the neighbors who are affected by LMM's application;" and that it "must also have its members present in-person at City Hall."

LMM respectfully opposes Mr. O'Leary's motion. The BZA did not state that its approval of the variance hinged on its review and approval of the safety plan after the public had a chance to comment on it. Nor can such a condition be inferred from the BZA's decision. The Cleveland Codified Ordinances ("Code") neither impose such a condition nor allow for such an inference. Indeed, while the Code requires that safety plans must be developed and maintained for certain uses, *see, e.g.*, Code §227.29 pertaining to day care centers, and may even prescribe specific measures that must be included in such plans, the BZA is granted no authority to review and approve or reject those plans or to subject them to public scrutiny, comment, and veto. No

Appellant's Response

such review, public comment, and approval was suggested by the C.B.O. during the BZA hearing, nor was any such suggestion made by any attendees or participants.

LMM informed the BZA of the safety measures it planned to take. The C.B.O. requested that those measures be stated in a safety plan. The BZA approved the variance and directed LMM to provide its safety plan. LMM has provided the BZA with its safety plan which includes the measures it discussed during the BZA hearing, and much more.

There is no need nor justification for a hearing to review LMM's safety plan. And in light of Code §101.021(b) and (c) (adopted in 2021), the BZA's members are not required to be "present in-person at City Hall" for BZA meetings:

(b) *Attendance.* Each public body may permit its members to attend its public meetings or hearings in-person, virtually, or a combination of the two. The following shall apply if any or all of the members are permitted to attend virtually:

(1) Each member attending virtually shall be considered present as if the member is in-person at the public meeting or hearing, shall be permitted to vote, and shall be counted for purposes of determining whether a quorum is present at the public meeting or hearing;

(2) Any vote on a resolution, ordinance or formal action of any kind cast by a member attending virtually shall have the same effect as if member is in-person at the public meeting or hearing; and

(3) The public body shall ensure that the public can observe and hear the discussions and deliberations of all the members of the public body, whether members are attending in-person or virtually.

(c) *Open to the Public.* Each public body shall determine the method by which its meetings, or hearings are open to the public. For public hearings conducted virtually, the public body must also establish a means, through the use of electronic equipment that is widely available to the general public, to communicate with witnesses and to receive documentary testimony and physical evidence.<sup>1</sup>

Accordingly, there being no basis in law for Mr. O'Leary's motion, LMM respectfully urges the BZA to deny it.

<sup>1</sup> Though beyond the scope of this submission, the State Open Meetings Act, RC § 121.22, may not apply to proceedings before quasi-judicial bodies.

This Response is without prejudice to any arguments, claims, or grounds for appeal LMM has or may have with respect to any aspects of the BZA's February 6, 2023, hearing or decisions in this matter or in BZA Calendar No. 23-014 upholding the Zoning Administrator's decision that the YDIC does not conform to the City's Zoning Code, all of which are expressly reserved.

Respectfully submitted,

/Benjamin J. Ockner/

Benjamin J. Ockner (0034404)  
Berns, Ockner & Greenberger, LLC  
3733 Park East Drive, Suite 200  
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Tel.: (216) 831-8838  
Fax: (216) 464-4489  
Email: bockner@bernsockner.com

*Counsel for Lutheran Metropolitan Ministry*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he served a copy of the foregoing by email this 23<sup>rd</sup> day of February 2023, as follows:

Ronald O'Leary, Esq.  
rolcary@olearylwc.com

Mary Z. Cornely, Esq.  
mcornely@clevelandohio.gov

Carolyn M. Downey, Esq.  
cdowney@clevelandohio.gov

/Benjamin J. Ockner/

Benjamin J. Ockner  
*Counsel for Lutheran Metropolitan Ministry*



## Youth Drop-In Center for Cuyahoga County

*A partnership of Lutheran Metropolitan Ministry, A Place 4 Me, The REACH Youth Action Board, Sisters of Charity Foundation of Cleveland, and Cuyahoga County Office of Homeless Services.*

### **Safety Plan for Youth Drop-In Center located at 4100 Franklin Blvd., Cleveland, Ohio 44113**

***Submitted to: The City of Cleveland Board of Zoning Appeals, 2/15/2023***

#### **Introduction**

Lutheran Metropolitan Ministry (LMM) owns the property located at 4100 Franklin Blvd. in Cleveland on which it will operate a Youth Drop-In Center ("YDIC"). Safety is extremely important to LMM, its collaborative partners, young people, and the community, as is a desirable, welcoming, neighborhood. This Safety Plan outlines measures to mitigate potential safety issues which may arise in connection with the YDIC and allow for appropriate and timely responses to them.

The Vision for the YDIC is to be a safe, stable, healing environment where young people experiencing the trauma of homelessness and housing instability can find respite, access services to meet their basic needs (food, laundry facilities, showers, etc.), form relationships and community, and develop plans to meet their long-term goals related to housing stability, education and employment, and physical and behavioral health and wellness.

The YDIC is based on a positive youth development model that embraces trauma-informed and strengths-based approaches. The model, developed in partnership with young leaders with lived experience of homelessness and a diverse collaboration of service providers and public service representatives, is grounded in the following Core Values: *Youth Leadership and Partnership; Racial and LGBTQ Equity; Hospitality; Highly Relational; and Low Barrier with a Focus on Basic Needs*. Young adults who attend the YDIC will be treated with dignity, allowing them to meet their needs while fostering an environment of mutual respect and safety for all involved.

#### **Operational Considerations**

The YDIC will be open to all young people ages 16-24 experiencing homelessness or housing instability, regardless of mental health or substance use challenges, lack of identification, whether they have their children with them, or other barriers that sometimes prevent young people from accessing services.

The YDIC will be open for services and programming during the hours of 9:00 a.m. and as late as 7:00 p.m., up to seven days per week. Before and after hours, the building will not be available for services and the premises secured. However, the building may be occupied by LMM staff, service partner staff, or cleaning/maintenance personnel during these times, and occasionally used for special events (e.g. community meetings, fundraising event).

Consistent with the value of *Hospitality*, young people will be referred to as "guests" of the Center. To ensure a *Low Barrier* approach, engagement activities from the first contact with the Center will be: non-stigmatizing and non-judgmental; sensitive to the willingness of the individual or family to be engaged; culturally and linguistically responsive; non-threatening; respectful of the person's autonomy

## Youth Drop-In Center for Cuyahoga County

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and confidentiality; focused on information pertinent for meeting service requests and objectives; trauma-informed; and flexible.

#### **Safety Features**

A safe and secure environment will be achieved through both physical measures, such as cameras, monitoring systems and metal detection, and through on-site personnel. Safety personnel will be trained to respond to situations that would impact the immediate health, safety and well-being of all persons and to identify and respond to behaviors that are counter-productive to a friendly and supportive environment.

#### **Exterior**

Improvements to fencing and the addition of gates will allow the site to be secured at closing. Additionally, security cameras will be installed as well as safety lighting.

The updated floor plan includes a rear entrance vestibule which will serve as the main entrance to the building (with the exception of persons with mobility needs who will be able to enter through the front). Locating the entrance in the rear of the building allows for privacy of young people who are seeking services, and an enclosed space for welcoming guests and ascertaining their needs upon arrival.

#### **Interior**

A non-intrusive metal detection system will be utilized to identify potential weapons upon entrance. Each guest will be signed in by reception staff at entry and signed out by staff at exit. At entry, guests will be asked to provide minimal identifying information.

The reception/security area is located at the entrance of the building, and next to this room is a safe room which will be used in the case of a young person entering the building in a crisis state, or a guest experiences a crisis event during their visit. This area will be monitored by safety personnel along with the reception staff.

Interior security cameras, will be mounted in common spaces and monitored by on site safety personnel stationed at the entrance.

The rear entrance will be the main entrance for guests, staff, personnel etc. entering and exiting the building. Other doors will be labeled "Emergency Exit Only" and will be alarmed to deter use. There will be clear signage posted for visual cues as to the location of rooms, policies or rules, safety guidelines and other important information.

## Youth Drop-In Center for Cuyahoga County

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### Safety Personnel

Trained safety personnel will be on the premises during hours of operation and will be supported by staff specially trained in trauma informed de-escalation methods. The safety personnel will not carry a weapon and will wear clothing that clearly identifies their role, but not a standard law enforcement uniform.

### Safety Guidelines

Guidelines will be instituted to create an environment that promotes a non-threatening, welcoming, and inclusive atmosphere, fosters trust and engagement for all guests, and ensures the safety and well-being of all. Guidelines will include:

1. Weapons, firearms, ammunition, or tasers are not permitted on the site.
2. Personal safety items (e.g. pocket knives, mace, pepper spray) will be secured on the site, and released to the guest upon departure.
3. No alcohol, illegal drugs, or criminal behavior is permitted on the premises.
4. Physical violence, threatening behavior and language are not allowed.
5. Bullying, intimidation, harassment, or purposefully singling out others will not be tolerated.
6. Children of guests are permitted at the center, and guests must not leave them unattended. Physical consequences for children are not condoned.
7. Animals, unless approved by ADA as service animals, are not permitted.
8. For non-emergencies, guests are asked to seek support from center staff and not call police directly, unless they feel unsafe or threatened.
9. Guests are responsible for their belongings.
10. Violations of municipal, state or federal law are not permitted at the YDIC or surrounding properties.
11. Loitering on or around the YDIC property or neighboring properties is prohibited, before or after hours. This includes sleeping in cars, or leaving a car parked while the guest is not on the drop-in site.
12. No trespassing on neighboring properties. This includes sleeping in cars or leaving a car parked while the guest is not on the drop-in site.

Violations of the guidelines will have consequences consistent with the level of the violation, and may involve a warning to allow guests to adjust their behavior, designated time away from the Center, or a permanent removal/ban.

All guidelines and conditions for removal will align with the YDIC's Core Values. Guidelines will be posted as Community Agreements, and may evolve over time to be responsive to the input of the guests. They will also be included in the YDIC Guest Handbook.

## Youth Drop-In Center for Cuyahoga County

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### Behavior Support & Management

LMM supports and encourages an environment in which the need for restrictive interventions is minimized to the greatest extent possible. LMM will promote a culture that emphasizes respect, dignity, healing, positive behavior, and providing individuals with the support they need to manage their behaviors to help prevent emergency situations. The use of restrictive behavior management interventions by guests, peers, or any person other than trained, qualified staff, is prohibited. LMM further prohibits the use of behavior management interventions: as a substitute for appropriate staffing or for the convenience of personnel or as punishment; in response to property damage that does not involve imminent danger to self or others; and when contraindicated in the individual's service or behavior plan.

*Behavior Intervention* – The Safety Personnel and YDIC Staff will be trained in Handle with Care®, an evidence-based behavior management system that creates a universal perception of physical and psychological safety by teaching preventative actions that result in a decrease in conflict and the need for physical restraint. Verbal de-escalation will be the primary technique used. While it is open, the Center will be an unlocked facility and participation is voluntary.

*Mental Health Crisis* – Center staff will be trained to recognize signs of crisis. Mental health staff/professionals that are on site and trained in crisis management will support any person who arrives at the Center experiencing a crisis. If a trained mental health professional is not immediately available, Mobile Crisis and/or Emergency Services (9-1-1) will be called to provide support and verbal de-escalation techniques will be used by Center staff.

*Identified Suicide Risk* – Center staff will be trained to recognize signs of suicide risk. Center staff will respond by connecting individuals to more intensive services, including on site mental health professionals; facilitating the development of a safety and/or crisis plan; or contacting emergency responders, 24-hour mobile crisis teams, emergency crisis intervention services, crisis stabilization, or 24-hour crisis hotlines, as appropriate.

### Collaboration with Public Safety Services

YDIC Staff will work cooperatively with the City of Cleveland Division of Police, 2nd District, to ensure neighborhood safety, and to report criminal behavior or suspected criminal behavior on or around the premises.

Prior to the center becoming operational, LMM will re-engage with the City of Cleveland Police, 2<sup>nd</sup> District and the Greater Cleveland RTA Police to discuss the safety plan and identify effective ways to collaborate on responses to any urgent safety matters, and discuss proactive ways to involve the police in creating a positive presence at the Center to build relationships with guests so that all parties feel heard and respected.



## Youth Drop-In Center for Cuyahoga County

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### Securing the Site After Hours

The site will be secured at closing by the safety personnel or other assigned staff person who will walk the exterior premises to ensure no one is remaining on site, and subsequently secure the premises by locking the gates. Safety lighting and security cameras will be operational at all times.

Guests accessing services throughout the day will be supported to develop a housing and transportation plan for after hours. Individuals in need of transportation may be provided bus passes, shuttled to a shelter or other housing site, use of ride share, carpooling, buddy system for walking to the bus stop, or other options depending on their needs.

### Community Relations & Communications

LMM is committed to working cooperatively to ensure that our neighborhood is a desirable and safe place to live and work. All stakeholders (LMM, on-site partners, center guests, residents, and businesses) have a mutual interest in creating and maintaining a safe, harmonious, and pleasant neighborhood and in maintaining a cooperative relationship in addressing and resolving mutual concerns and problems.

#### ***The Youth Drop-In Center Management and Staff will:***

- Ensure compliance with the standards of certifying organizations including applicable City codes;
- Discourage loitering on or around the premises;
- Provide trained safety personnel to monitor the interior and exterior of the facility;
- Work cooperatively with the City of Cleveland Division of Police, 2nd District, to ensure neighborhood safety, and to report criminal or suspected criminal behavior on or around the premises;
- Prohibit firearms, weapons, alcohol, and illegal drugs.
- Disclose pertinent information about participants to law enforcement officials when presented with written documentation in accordance with applicable law (e.g., court order, warrant, subpoena, summons, etc.) and in accordance with respective policies and procedures;
- Investigate and respond promptly to concerns about center guests (or young people believed to be a center guest);
- Provide emergency contact information for key management staff
- Keep residents and businesses informed of programs and services through newsletters and other communications;
- Host community meetings, either separately or in conjunction with other providers, block clubs or Ohio City Inc.;
- Engage neighborhood residents and area businesses to participate in programming as appropriate;
- Encourage participants, as appropriate, to volunteer for neighborhood clean-up, neighborhood improvement and/or social events;
- Notify residents and businesses in advance of any special events or activities that may temporarily increase hours of operation or traffic to the community; and
- Whenever possible, recruit and train qualified employees from the surrounding neighborhood.

## Youth Drop-In Center for Cuyahoga County

*A partnership of Lutheran Metropolitan Ministry, A Place 4 Me, The REACH Youth Action Board, Sisters of Charity Foundation of Cleveland, and Cuyahoga County Office of Homeless Services.*

### ***As neighborhood partners, the Youth Drop Drop-In Center Management and Staff will encourage Residents and Businesses to:***

- Offer support and advice on matters concerning safety;
- Contact the management staff with concerns about persons believed to be center guests prior to calling authorities or media, unless the incident is an emergency or urgent in nature where police or EMS are needed to respond;
- Inform management staff of any individuals in the neighborhood suspected of targeting center guests for illegal activity;
- Continue to recognize that young people experiencing or at risk of homelessness or in need of supportive services are members of our community with the same rights as other citizens;
- Refrain from assuming that young people experiencing or at risk of homelessness, or in need of supportive services are the young people committing crimes in the area;
- Work with LMM and other service providers to properly investigate all incidents where center guest involvement is reasonably suspected;
- Participate in community meetings for information sharing; and
- Inform management staff of any community events that may be appropriate for center guest to attend.

This safety plan is intended to memorialize public statements by LMM and its service partners regarding the YDIC, including during the February 6, 2023 Board of Zoning Appeals, and to identify other safety measures for the YDIC not previously stated. It is not intended to create a contract with any persons or entities except to the extent it may create contractual obligations between LMM and its service partners and the guests. No other persons or entities are intended as beneficiaries of this plan, nor is it intended to create any rights enforceable by such persons or entities. This safety plan is without prejudice to any and all rights and defenses LMM has or may have in connection with the YDIC and the Board of Zoning Appeals' consideration of the YDIC.

### Contacts:

Lisa Smith, Vice President of Youth Resiliency Services, Lutheran Metropolitan Ministry  
[lsmith@lutheranmetro.org](mailto:lsmith@lutheranmetro.org) 216.623.0959

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Maria Foschia, President & CEO, Lutheran Metropolitan Ministry  
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IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO



**LAURA CYROCKI**  
11303 Hessler Road  
Cleveland, OH 44106,

and

**CHARLES E. HOVAN**  
11301 Hessler Road  
Cleveland, OH 44106,

Appellants,

v.

**CITY OF CLEVELAND, OHIO**  
601 Lakeside Avenue  
Cleveland, OH 44114,

and

**CITY OF CLEVELAND  
BOARD OF ZONING APPEALS**  
601 Lakeside Avenue, Room 506  
Cleveland, OH 44114,

Appellees.

CASE NO:

JUDGE:

**NOTICE OF APPEAL**

**(Administrative Appeal)**

Appellants, Laura Cyrocki and Charles E. Hovan ("Appellants") hereby give notice of appeal, to the Cuyahoga County Court of Common Pleas from the final decisions of the City of Cleveland Board of Zoning Appeals in Calendar No. 23-002 & 23-013, rendered at its meeting on January 30, 2023 and adopted on February 6, 2023.

The final decisions of the BZA are unconstitutional, illegal, arbitrary, capricious, unreasonable, and unsupported by a preponderance of substantial, reliable, and probative evidence on the whole record.



This administrative appeal is made pursuant to Ohio Revised Code chapters 2505 and 2506. This Court has jurisdiction to hear this appeal under ORC § 2506.01. No administrative appeal or remedy is available from any other administrative board or body of the City of Cleveland. This appeal is brought on issues of law and fact.

A Preacipe has also been served upon the BZA requesting the preparation of a complete transcript of the meeting and filing of the transcript with the original record to the Clerk of the Common Pleas Court of Cuyahoga County, Ohio, in accordance with ORC § 2506.02.



Respectfully submitted,

/s/ Laura Cyrocki  
**LAURA CYROCKI**  
11303 Hessler Road  
Cleveland, OH 44106  
Phone  
Email

*Appellant, pro se*

/s/ Charles E. Hoven  
**CHARLES E. HOVEN**  
11301 Hessler Road  
Cleveland, OH 44106  
Phone  
Email

*Appellant, pro se*

### **CERTIFICATE OF SERVICE**

I certify that a copy of this *Notice of Appeal* was filed electronically and served upon *City of Cleveland, Ohio* and *City of Cleveland, Board of Zoning Appeals* on February 13, 2023 by *hand delivery*.

/s/ Laura Cyrocki  
**LAURA CYROCKI**



CLEVELAND BOARD OF ZONING APPEALS

CALENDAR NO. 23-002

1975 FORD DRIVE

RESOLUTION

FEBRUARY 6, 2023

WHEREAS, Ford-Hessler Property Reorganization LLC, proposes to erect a three story, six dwelling unit addition to existing five unit residential building located in an E3 Multi-Family Residential District. The owner appeals for relief from the strict application of the following section of the Cleveland Codified Ordinances:

1. Section 349.08 which states that where five (5) or more accessory off-street parking spaces are provided, and are located on a lot that is adjacent to a Residence District or that adjoins a building containing dwelling units, such parking spaces shall be screened from all adjoining lots in the Residence District or a building containing dwelling units, by an opaque wall, a uniformly painted fence of fire resistant material or a strip of land at least four (4) feet wide and densely planted with shrubs that form a dense screen year round. Such wall, fence or shrubs shall be at least three (3) feet, but not more than six (6) feet six (6) inches in height.

WHEREAS, after public notice and written notice mailed to twenty five directly affected property owners, a public hearing was held on January 30, 2023;

WHEREAS: this board granted a variance in Calendar Number 21-173 to reduce the parking to zero at this address. Kevin Dreyfus Wells, the architect, presented the plans; directly adjacent neighbors submitted letters stating that for the purposes of maintenance they ask that the appellant not put up a fence or heavy screening. Mr. Wells stated that a low planting bed will be installed between the properties as shown on the site plan. Karl Brunjes from the Cleveland Landmarks Commission was present to state that the project was reviewed and approved by the commission. Mark Fremont a neighboring property owner stated that allowing this variance would exacerbate the current parking situation; the one-way street does not provide enough parking currently and illegal parking causes serious maneuverability issues. Laura Cyrocki, a neighbor, argued that the original variance to waive parking requirements in Calendar Number 21-173 should be reconsidered as it was part of a comprehensive plan that included a parking agreement. She also stated that the screening should be installed as it would improve the quality of life for the residents. Attorney for the appellant, Mahjeed Makhilouf reminded the board that a parking variance is not requested at this time. Council President Griffin's aide was present to express his support for the project. Chief City Planner Maurice Ruelens stated that the variance requested is minor and that based upon the support letters from the most effected neighbors staff supports the variance; and,

WHEREAS, after due consideration of the testimony and other evidence presented at the hearing, the Board determined that the variances should be granted; and,

WHEREAS, Local conditions and the evidence presented justify the Board in granting relief from practical difficulty and unnecessary hardship caused by strict compliance with specific provisions of the zoning ordinances. Refusal of the variance would deprive the owner of substantial property rights and granting the appeal will not be contrary to the purpose and intent of the Zoning Code; now therefore,

BE IT RESOLVED that the decision of the Building and Housing Department is reversed and the appeal is granted subject to the Cleveland Codified Ordinances.

Yeas: Britt, Holzer, Rocha, Brown, Faith  
Absent:

Approved and adopted by the Board of Zoning Appeals February 6, 2023.

  
Elizabeth Kukla - Secretary  
Board of Zoning Appeals

CLEVELAND BOARD OF ZONING APPEALS

CALENDAR NO. 23-013

APPEAL OF LAURA CYROCKI

AND CHARLES HOVEN AGAINST

BUILDING AND HOUSING DECISION

RESOLUTION

FEBRUARY 6, 2023

WHEREAS, Laura Cyrocki and Charles Hoven appeal under the authority of Section 76-6 of the Charter of the City of Cleveland and Section 329.02(d) of the Cleveland Codified Ordinances from the determination in site/zoning application B22030881 and subsequent Notice of Nonconformance adjudicated regarding a proposed new addition to an existing apartment located at 1975 Ford Rd. by the Building and Housing Zoning Administrator on December 20, 2022.

WHEREAS, after written notice e-mailed to the property owner and appellant, a public hearing was held on January 30, 2023; and,

WHEREAS, Laura Cyrocki claimed that the adjudication, issued in B22030881 to erect an addition at 1975 Ford Rd., was incorrectly issued because code sections regarding parking, building alignment and City Planning Commission review were erroneously omitted. She argued that in Calendar Number 21-173 this board granted a variance to reduce the parking to zero at 1975 Ford Rd. with the understanding that address was part of an overall project (BZA21-152 and 21-174 regarding new construction of an apartment at 11300 Hessler and reduction of parking at 1981 Ford due to a lot reconfiguration) that was approved based on evidence of a Parking Agreement with University Circle Inc. to use spaces in a nearby parking garage. Ms. Cyrocki claims that conditions have significantly changed specifically that the parking garage has been demolished therefore the entire project should be re-examined by the Zoning Administrator. Zoning Administrator Richard Riccardi stated that he relied on language in code section 349.03 that states "when any building, structure or premises has a change of use, addition of dwelling units, gross floor area, seating capacity or other units of measurement specified herein for required parking facilities, which creates a need for an increase of more than fifteen percent (15%) in accessory off-street parking, additional facilities as required herein shall be provided only for such increase in use". Mr. Riccardi explained also that due to a Lot Split and Consolidation Hessler Road became the "rear and side yard" of the subject property and was reviewed as such; rules regarding building alignment in side yards and front yards are different; and,

WHEREAS, with due consideration given to the testimony and other evidence submitted at the hearing, the Board finds that the City of Cleveland's Building and Housing Zoning Administrator was neither arbitrary nor capricious nor acted illegally in any way as he reasonably relied on applicable Zoning Codes in the decision to issue the Notice of Nonconformance in B220300881; now therefore,

BE IT RESOLVED that the decision of the City of Cleveland to issue the Notice of Nonconformance in B220300881 in the within matter is sustained and the appeal is denied.

Yeas: Britt, Faith, Brown, Rocha, Holzer,  
Absent:

Approved and adopted by the Board of Zoning Appeals February 6, 2023.

  
Elizabeth Kukla - Secretary of the Board of Zoning Appeals



SS: AFFIDAVIT OF LAURA CYROCKI

I, Laura Cyrocki, being first duly sworn, competent to testify, and testifying from personal knowledge, do hereby state the following:

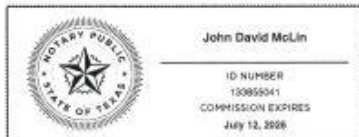
- (1) I live at 11303 Hessler Road, Cleveland, Ohio.
- (2) I attended the Board of Zoning Appeals hearing for Calender No. 23-002 and 23-013 on January 30, 2023 for an addition to 1975 Ford Drive, a new building proposed to be located in the Hessler Road and Hessler Court Historic District. Other residents of Hessler Road also attended as well.
- (3) I am executing this affidavit in support of our motion to reconsider the decisions in the above-cited cases.
- (4) Due to failure of the Board of Zoning Appeals to consider the provisions of the City of Cleveland Ordinances in making its decision
- (5) Considering that the Board of Zoning Appeals decisions are unconstitutional, illegal, arbitrary, capricious, unreasonable, and unsupported by a preponderance of substantial, reliable, and probative evidence on the whole record.

Further Affiant Sayeth Naught

Laura Ann Cyrocki

Laura Cyrocki

Sworn to before me by Laura Cyrocki and subscribed in my presence on 13th day of February 2023.



Notarized online using audio-video communication

Notary

John David McLin



Common Pleas Court of Cuyahoga County, Ohio

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

Appellants: Charles Hosen, Laura Cyrocki

Plaintiff

Case Number: \_\_\_\_\_

Vs.

Date: \_\_\_\_\_

Appellees: City of Cleveland, City of Cleveland Board of Zoning Appeals

Defendant

Has this case been previously filed and dismissed? Yes ☐ No ☒

Case #: \_\_\_\_\_ Judge: \_\_\_\_\_

Is this case related to any new cases now pending or previously filed? Yes ☐ No ☐

Case #: \_\_\_\_\_ Judge: \_\_\_\_\_

CIVIL CLASSIFICATIONS: Place an (X) In ONE Classification Only.

Professional Torts:

- ☐ 1311 Medical Malpractice
- ☐ 1315 Dental Malpractice
- ☐ 1316 Optometric Malpractice
- ☐ 1317 Chiropractic Malpractice
- ☐ 1312 Legal Malpractice
- ☐ 1313 Other Malpractice

Product Liability:

- ☐ 1330 Product Liability

Other Torts:

- ☐ 1310 Motor Vehicle Accident
- ☐ 1314 Consumer Action
- ☐ 1350 Misc. Tort

Workers Compensation:

- ☐ 1550 Workers Compensation
- ☐ 1531 Workers Comp. Asbestos

Foreclosures:

- ☐ Utilize Separate Foreclosure Designation Form

Commercial Docket:

- ☐ 1386 Commercial Docket
- ☐ 1387 Commercial Docket with Foreclosure

Administrative Appeals:

- ☐ 1540 Employment Services
- ☒ 1551 Other

Other Civil:

- ☐ 1500 Replevin/Attachment
- ☐ 1382 Business Contract
- ☐ 1384 Real Estate Contract
- ☐ 1388 Consumer Debt
- ☐ 1390 Cognovit
- ☐ 1391 Other Contracts
- ☐ 1490 Foreign Judgment
- ☐ 1491 Stalking Civil Protection Order
- ☐ 1501 Misc. Other
- ☐ 1502 Petition to Contest Adam Walsh Act
- ☐ 1503 Certificate of Qualification for Employment

Amount of Controversy:

- ☒ None Stated
- ☐ Less than \$25,000
- ☐ Prayer Amount \_\_\_\_\_

Parties have previously attempted one of the following prior to filing:

- ☐ Arbitration
- ☐ Early Neutral Evaluation
- ☐ Mediation
- ☒ None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

Pro Se.

Firm Name (Print or Type)  
Charles Hosen & Laura Cyrocki

Attorney of Record (Print or Type)

Address  
11301 & 11303 Hessler Rd

Supreme Court #

Address Cleveland OH 44106

Email Address

Phone

Signature

Laura Cyrocki

# Cleveland Board of Zoning Appeals

## Adjournment

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